



APPLICATION (Revised April 2008)
21ST CIRCUIT JUDICIAL COMMISSION
ASSOCIATE CIRCUIT JUDGE

THESE QUESTIONS WILL BE MADE PUBLIC IF THE APPLICANT IS
NOMINEE.

NAME: Kristine Allen Kerr

1. State your present principal occupation: **Family Court Commissioner**
2. Are you at least 25 years of age? **Yes.**
3. (a) How long have you been a citizen of the United States? **All my life.**
(b) Have you been a resident of the County of St. Louis for at least one year immediately prior to the date of this application? **Yes.**
(c) How long have you been a qualified voter of Missouri? **Since 1985.**

4. Are you licensed to practice law in Missouri? **Yes.**

List any other states, courts, or agencies in which you are licensed as an attorney:
Illinois since 1985 (currently on inactive status).

5. State the date you were admitted to the Bar in Missouri? **1985**

Missouri Bar Number: **35238**

(In completing items 6 and 7, please account for all time periods between post-high school education and the date of this application.)

6. State the name and address of all colleges and universities you have attended, together with the dates and degrees received:

Brown University	B.A. Economics	1978-1982	Providence, RI
Boston University	J.D.	1982-1985	Boston, MA
Duquesne University	<i>(third year law school as a visiting student)</i>		Pittsburgh, PA

7. State, in chronological order, your entire working career, including non-legal employment, if any. Include the name and address of each firm, corporation, partnership, or governmental body with which you have been associated, and the dates thereof. (Start with earliest date, conclude with present.)

1976-1977 Lifeguard Swarthmore Swim Club (*summers only*)
Swarthmore, PA

1978-1982 Food Services Brown University
Providence, RI
Worked part-time throughout college as line dishwasher, cashier, pizza chef and sandwich maker.

1982-1984 Bagel Sales Boston University
Boston, MA
Sold bagels part-time in the lobby of the law school during first and second years in law school.

1984 Legal Intern Mellon Bank, N.A. (*summer only*)
Philadelphia, PA
Employed by Mellon Bank as a legal intern in the law department for the summer.

1985 Aerobics Instructor
Pittsburgh, PA
Taught aerobics part-time at a small studio during third year in law school.

1985 Attorney Coburn, Croft and Putzell (*formerly known as*)
Former address was in the Mercantile Building, St. Louis, MO, 63101.
Employed as a contract attorney for the last six months of 1985, while waiting for an appellate clerkship to begin, and assisted in preparing the defense case, on behalf of Monsanto, in complex litigation surrounding dioxin exposure to multiple plaintiffs in Illinois.

1986-1987 Law Clerk Missouri Court of Appeals (E.D.)
Law clerk for the Hon. Kent E. Karohl.
Researched and drafted opinions for the Missouri Court of Appeals.

1987-1988 Attorney Mann, Poger, Wittner & Hereford (*formerly known as*)
Former address was 7711 Carondelet, St. Louis, MO, 63105.
Associate attorney in the areas of domestic, worker's compensation, bankruptcy and some personal injury.

1988-1991 Attorney Office of the Public Defender - Trial Division
1320 Market Street, Room 62, St. Louis, MO, 63103 (*former address*).
Trial attorney and team leader. Responsible for representing indigent clients charged with felonies in St. Louis City. Tried over 20 felony cases to a jury. As team leader, supervised 5 felony attorneys.

1991-1994 Attorney Office of the Public Defender - Capital Litigation
1000 St. Louis Union Station, Ste. 300, St. Louis, MO 63103
Trial attorney (associate and lead). Represented indigent clients at the trial level in many jurisdictions across Missouri, wherein the client was charged with Murder First Degree and the state sought the death penalty. Participated in 8 death penalty jury trials; 4 of those as one of two lead trial attorneys.

1994-2003 (Sept.) First Assistant Office of the Public Defender - Trial

1114 Market Street, Rm 602, St. Louis, MO, 63101.

First Assistant Public Defender. Assisted the District Defender in supervising twenty-five attorneys, five investigators and six support staff. Assigned all felony cases in the City Public Defender's Office from 1994 to September, 2003. Created and maintained caseload assignment database designed for this purpose. Handled a major felony and probation violation caseload. Second-sat felony and misdemeanor attorneys in jury and bench trials. Consulted with staff attorneys and provided guidance and training on issues which arise in case preparation and trial. Participated in various hiring and personnel decisions. Consulted with individual team leaders to monitor the ongoing training and development of trial staff. Worked with the members of the Twenty-Second Judicial Circuit, including the judiciary, to facilitate productive relationships between the courts and the Office of the Public Defender. Designated liaison for office on information and technology issues and needs. Created and maintained a database containing current office policies and procedures.

2003 (Oct.)-2004 (Sept.) Attorney Office of the Public Defender-Trial

100 South Central, 2nd Floor, Clayton, MO 63105

Trial attorney. Responsible for representing indigent clients facing all types of felony charges, up to and including Murder First Degree, in St. Louis County. Tried two cases to jury during that time.

2004 (Sept.)-present Family Court Commissioner – St. Louis County Family Court (Juvenile)

501 South Brentwood Blvd. (Division 61), Clayton, MO 63105

Judicial officer responsible for hearing cases involving juveniles who are alleged to be in need of care because they have been abused or neglected, or are alleged to have committed acts which would be criminal offenses if performed by an adult. Once the child is taken under the jurisdiction of this court, the court is also responsible for hearing any other family law matters (dissolutions, motions to modify, paternity actions) which may arise, as well as all guardianship cases (contested and non-contested) which may arise regarding children under the court's jurisdiction. Finally, this court hears and decides proceedings to terminate parental rights (contested and non-contested), in the event that the parent(s) are not able or willing to be reunified with their child. The court issues written orders regarding all these proceedings.

8. Are you able, with or without a reasonable accommodation, to perform the essential functions of a judge including the ability to preside over trials, perform legal research, attend court anywhere in the state, communicate clearly and effectively both orally and in writing, and expeditiously decide issues coming before the court? **Yes.**
9. Attach a list of cases you have tried in the last five years. Set forth the style, cause number, date, and court, and identify who you represented, whether you were first or second chair, and the name and address of opposing counsel. Indicate for each case whether bench or jury tried and provide a one to three sentence description of each case and its outcome. If, during any of the last five years, you served as a commissioner or in any other judicial capacity, set forth the dates of same and a description of the duties performed. **Please see attached appendices.**
10. Have you briefed or argued any case in an appellate court? **Yes.**
If yes, attach a list showing the citation for each case and describe the extent of your participation in briefing and arguing the case. **Please see attached appendices.**
11. Set forth any additional information that demonstrates the quality of your legal work as an attorney. **Please see attached appendices.**

12. Have you ever been convicted of a misdemeanor or felony? **No.**

If yes, provide details, including the style of the case, cause number, name of the jurisdiction, and date of conviction: **n/a.**

21. 13. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem or defendant ad litem? **No.** *(Some clients have filed motions for post-conviction relief after sentencing, alleging Sixth Amendment violations of their rights to effective assistance of counsel. This is frequent in criminal cases; please let me know if you need specific information in this regard.)*

If yes, provide details, including the style of the case, cause number, name of the jurisdiction and the approximate year in which such litigation was commenced and in which it was terminated: **N/A.**

14. Have you ever been disciplined or cited for breach of ethics or professional conduct by a court or by any bar association or committee thereof? **No.**

If yes, provide details: **N/A.**

15. Have you ever been held in contempt of court? **No.**

If yes, provide details: **N/A.**

16. If you are or were a member of the Judiciary of the State of Missouri, please state:

- (a) Whether an order of reprimand, removal, retirement, suspension or other disciplinary action has ever been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct?
If yes, state the nature of such breach, the date discipline was imposed and the exact nature and duration of the discipline imposed: **No.**

- (b) Whether a reprimand or admonishment has ever been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Rule 12.07 of the Supreme Court Rules Governing the Judiciary. **No.**

If yes, provide details including date the order was entered, the date of your consent, and a description of the conduct you were ordered to cease and desist: **N/A.**

- (c) Whether, to your knowledge, you have been a subject of a complaint and investigation by the Commission on Retirement, Removal and Discipline, which did not result in any action by the Commission? If yes, provide details: **Not to my knowledge; I have never been notified that I was the subject of such proceedings by any applicable professional committee.**

17. To your knowledge, have you been investigated by a court or by any bar association or committee thereof for breach of ethics or professional conduct? **Not to my knowledge; I have never been notified of any such proceedings by any professional association.**

If yes, provide details: N/A.

18. List all bar associations and other professional societies, of which you are a member, with any offices held and dates:

***Current Memberships:* Missouri Bar Association, St. Louis County Bar Association, Bar Association of Metropolitan St. Louis, Lawyer's Association, Women Lawyer's Association (Member at Large, 2004-2006) and the National Association of Women Judges.**

***Previous memberships:* Missouri Association of Drug Court Professionals (Board Member – Secretary – 2002 to 2004).**

19. Describe your community activities, including any organizations, not listed above, with which you are affiliated: **Member of Trinity Presbyterian Church, University City, MO, and the Greater St. Louis Knitters Guild. Girl Scout Troop Cookie Sales Manager (2004-2008).**

20. Do you now hold or have you ever held any elective or appointive public office or position?
No.

If yes, provide details:

21. Provide the branches and dates of (a) military service, or (b) other public service, not otherwise covered in this application. If discharged from the military, was the discharge other than honorable? If military service continues, so state: **None.**

22. List any professional articles or books which have been published or any special recognition or award of a professional nature which you have received: **Distinguished Fellow Award, Bar Association of Metropolitan St. Louis-2003).**

23. Furnish the names and addresses, including zip codes and telephone numbers of not more than five persons, who are not judges, as references with respect to your judicial qualifications:

Michael Naccarato
Attorney at Law
A.G. Edwards
One North Jefferson
St. Louis, MO 63103
314-995-3802

Jennifer Joyce
Circuit Attorney
1114 Market Street
St. Louis, MO 63101
314-622-4941

Hon. Brendan Ryan (*retired*)
Thompson Coburn
One US Bank Plaza
St. Louis, MO 63101
314-552-6000

Eric V. Barnhart
Attorney at Law
Fischer and Byrne
818 Lafayette Ave.
St. Louis, MO 63104
314-231-0777

Daniel Underwood
Managing Attorney
Children's Legal Alliance
Legal Services of Eastern Missouri
314-256-8715

24. State any additional data you deem relevant: *Please see attached supplemental appendices with supporting documents regarding judicial experience, litigation and trial experience (Appendix A), appellate practice (Appendix B), management experience (Appendix C) and training experience (Appendix D).*

By my signature to this application, I authorize: (1) the Commission by its chairperson to obtain relevant information, including but not limited to documents, records and files with respect to my medical, police or disciplinary records, and (2) the Commission and its members to obtain additional relevant information regarding my qualifications as well as the accuracy of my responses to the questions on this application, with the understanding that the information described in (1) and (2) above is available only to the members of the Twenty-First Circuit Judicial Commission. Notwithstanding the above, in accordance with Supreme Court Rule 10, as amended effective February 29, 2008, if I am one of the three nominees listed on the certificate of nomination sent to the Governor, I authorize the Commission to send a complete copy of this application to the Governor and publicly release a copy of the application with personal and confidential information redacted as identified on the cover page of this application.

I hereby certify that all my statements as made above are correct and that if I am appointed to the office of Associate Circuit Judge of the Circuit Court of the County of St. Louis, I will accept the appointment, qualify, and promptly enter upon the performance of the duties of that office.

DATE: 4-21-08

SIGNED: Kristin A. Ken

APPLICATION APPENDICES

9. *Attach a list of cases you have tried in the last five years. Set forth the style, cause number, date, and court, and identify who you represented, whether you were first or second chair, and the name and address of opposing counsel. Indicate for each case whether bench or jury trial and provide a one to three sentence description of each case and its outcome. If, during any of the last five years, you served as a commissioner or in any other judicial capacity, set forth the dates of same and a description of the duties performed.*

In 2004, I was appointed to serve as Family Court Commissioner in the St. Louis County Family Court (Juvenile Division) after majority election by the St. Louis County Circuit Court, sitting *en banc*. I am one of four judicial officers in the Family Courts Building, sitting with the Hon. Michael Burton, the Hon. Bernhardt Drumm and Commissioner Terry Wiese. We all hear cases involving allegations of abuse and neglect or delinquency. In addition, we would hear any dissolution matters related to a child under jurisdiction with the court, including paternity actions, motions to modify and requests for orders of protection. Finally, I am assigned to hear all the guardianship matters pending before the juvenile court (for all the divisions who have children under the court's jurisdiction).

If not settled or dismissed, all these cases must resolved by bench trial. Since my appointment in 2004, I have heard between fifteen and twenty five contested hearings each year; these may be contested delinquency trials, contested abuse or neglect trials, contested hearings on petitions to terminate parental rights and occasional contested guardianship hearings. I have the records and trial notes for all of these cases, in the event that I can provide further information on this topic. Frequently I will prepare written orders following a contested hearing; I will always do so after a contested termination of parental rights or guardianship case. If any party requests written findings of fact and conclusions of law, I will prepare them. Finally, I prepare my own orders for the many review hearings which we must conduct after taking jurisdiction of any child.

In addition to hearing the above cases, we conduct detention hearings and protective custody hearings on a rotating basis each week. I am responsible for handling the detention hearings on Monday mornings and for handling any scheduled protective custody hearings on Friday mornings.

Regarding my work as a practicing attorney in the previous five years, I have tried the following cases:

1. State v. Christopher O. Martin

June 28, 2004

St. Louis County, Judge Larry Kendrick presiding

Attorney for Defendant: 1st chair

Opposing counsel: Kathi Alizadeh, Assistant Prosecuting Attorney

Office of the Prosecuting Attorney

100 South Central, Clayton, MO 63105

Jury Trial

The defendant was charged with Murder in the First Degree and Armed Criminal Action, which arose from a domestic dispute. The defendant and his wife were arguing. He shot her in their home, with their five year old son present. Afterwards, he placed gunshots strategically in various parts of the house, in an attempt to create the impression that he shot his wife in self defense. Mr. Martin made multiple statements regarding the circumstances of the incident and his participation in it. He was convicted as charged.

2. State v. James McCaw
02CR-5043
December 1, 2003
St. Louis County, Judge John Kintz presiding
Attorney for Defendant: 1st chair
Opposing counsel: Kelly Clarkin, Assistant Prosecuting Attorney
 Office of the Prosecuting Attorney
 100 South Central, Clayton, MO 63105

Jury Trial

The defendant was originally charged with twenty-two counts of Stealing and Receiving Stolen Property, stemming from his ten years of stealing construction equipment and fencing it in various parts of the country. As a result, he was convicted in federal court and was serving a twenty-two year sentence. The prosecution dismissed many counts, we proceeded to trial on five counts, and the defendant was convicted as charged on four counts.

2. State v. Robert Holt
001-4264
June 2, 2003
St. Louis City, Judge Margaret Neill presiding
Attorney for Defendant: 1st chair
Opposing counsel: Krista Boston, Assistant Circuit Attorney
 Office of the Circuit Attorney
 1114 Market Street, St. Louis, MO 63101

Jury Trial

The defendant was charged with Illegal Possession of Cocaine and Receiving Stolen Property (misdemeanor). The police found a rock in his jacket pocket after pulling him over for driving with stolen license plates. The defendant was convicted as charged.

3. State v. W.T.
Omitted, due to confidential nature of the records.
February 10, 2003
St. Louis City, Judge Timothy Wilson presiding
Attorney for Defendant: 1st chair
Opposing counsel: Tim O'Leary, former Assistant Circuit Attorney
 Sandberg, Phoenix and von Gontard, PC

One City Center, 15th Floor,
515 N. 6th Street, St. Louis, MO 63101
314.231.3332

Jury Trial

The defendant was charged with three counts of Assault in the Second Degree, Tampering First Degree, Leaving the Scene of an Accident and Assault Third Degree. All charges arose from the defendant allegedly driving a stolen vehicle the wrong way up a one-way street, very fast, and running a stop sign. He crashed broadside into another car, also crossing the intersection. The occupants of that car, including small children, were injured very badly. The state presented eyewitness and identification evidence, the police captured defendant one block away and he confessed at the hospital while receiving treatment for his head wound. The jury found the defendant not guilty on all counts.

10. *Have you briefed or argued any case in an appellate court?* Yes.

If yes, attach a list showing the citation for each case and describe the extent of your participation in briefing and arguing the case.

State of Missouri ex rel. D.C. v. The Hon. Maura McShane (136 S.W.3rd 67, Mo., 2004): This proceeding, before the Missouri Supreme Court, sought a writ of prohibition to prevent the court from proceeding with a certification hearing of the juvenile (which would then permit him to be prosecuted as an adult). The issue was whether juvenile must be mentally competent to proceed in a certification hearing. I retained experts, prepared the case, filed appropriate motions, conducted the evidentiary hearing which raised and preserved the issue, prepared all writs and wrote all briefs. I argued the case before the Supreme Court. The decision, authored by the Hon. Stephen Limbaugh with all concurring, was issued in June, 2004; the court granted the writ of prohibition as requested.

APPENDIX A: LITIGATION AND TRIAL EXPERIENCE

In addition to the cases listed in the application above, here is a complete list of the cases that I have tried to a jury, or co-counseled in trial as part of the defense team in a death penalty case, in chronological order:

1. State v. Roger House
 881-0164
 April, 1988
 Division 21, St. Louis City, Judge Anna Forder presiding
 Attorney for Defendant (1st chair)
 Opposing counsel: Hon. Steven Ohmer, former Assistant Circuit Attorney
 Circuit Judge, 22nd Judicial Circuit
 10 North Tucker Street, St. Louis, MO 63101

 Jury Trial

The defendant was charged with Robbery Second Degree, alleged to have forcibly taken food and other items from a friend, in that friend's apartment. The jury hung and the defendant later pled guilty to a reduced charge for time served.

2. State v. Kenneth Fitzgerald
 881-1082
 October 31, 1988
 Division , St. Louis City, Judge presiding
 Attorney for Defendant (1st chair)
 Opposing counsel: , Assistant Circuit Attorney
 Office of the Circuit Attorney
 1320 Market Street, St. Louis, MO 63103

 Jury Trial

The defendant was charged with unlawful use of a weapon, in that he carried it concealed. After a jury trial, he was convicted as charged and received probation.

3. State v. David Bunch
 881-1367
 Nov. 15, 1988
 Division , St. Louis City, Judge Jack Koehr presiding
 Attorney for Defendant (1st chair)
 Opposing counsel: Daniel Bruntrager, former Assistant Circuit Attorney
 Bruntrager and Billings, PC
 1735 Big Bend Blvd.
 Brentwood, MO 63117

 Jury Trial

The defendant was accused of burglarizing an apartment and taking various items. He was convicted as charged.

4. State v. Lewis Johnson

881-1190

Jan. 3, 1989

Division, St. Louis City, Judge Charles Shaw presiding

Attorney for Defendant (1st chair)

Opposing counsel: Katie Trudeau, former Assistant Circuit Attorney
Office of the Circuit Attorney (*current address unknown*)
1320 Market Street, St. Louis, MO 63103

Jury Trial

Defendant was charged with possessing cocaine. After jury trial, he was acquitted.

5. State v. Lewis Johnson

881-0749

Jan. 31, 1989

Division, St. Louis City, Judge presiding

Attorney for Defendant (1st chair)

Opposing counsel: Katie Trudeau, former Assistant Circuit Attorney
Office of the Circuit Attorney (*current address unknown*)
1320 Market Street, St. Louis, MO 63103

Jury Trial

Defendant was charged with possessing cocaine. After jury trial, he was acquitted. Subsequently, after being acquitted on two separate drug possession cases, he was discharged from his probation.

6. State v. Sterling Watkins

881-2158

Feb. 8, 1989

Division 17, St. Louis City, Judge Daniel Tillman presiding

Attorney for Defendant (1st chair)

Opposing counsel: Daniel Bruntrager, former Assistant Circuit Attorney
Bruntrager and Billings, PC
1735 Big Bend Blvd., Brentwood, MO 63117

Jury Trial

Defendant was charged with leaving the scene of an accident. After jury trial, he was convicted.

7. State v. Marvin Stewart

881-2338

March 27, 1989

Division 23, St. Louis City, Judge John Chancellor (*deceased*) presiding

Attorney for Defendant (1st chair)

Opposing counsel: Nels Moss, former Assistant Circuit Attorney
Attorney at Law
212 South Meramec Ave., Clayton, MO 63105

Jury Trial

Defendant was charged with arson and assault in the first degree. The state alleged that he walked down to the victim's apartment, made a "molotov cocktail" from gasoline, a rag and a glass jar. In full view of the neighbors, defendant tossed his creation in through the window. It landed on the victim as he lay on the polyester sofa, burning him and his apartment. Defendant was convicted as charged.

8. State v. Michael Grimes

881-3577

June 12, 1989

St. Louis City, Judge Thomas Mummert presiding

Attorney for Defendant (1st chair)

Opposing counsel: Jeffrey Jamieson, former Assistant Circuit Attorney
Blackwell Sanders Peper Martin, LLP
720 Olive Street, Suite 2400, St. Louis, MO 63101

Jury Trial

Defendant was charged with possessing a gun, in the waistband of his pants, and drugs. After jury trial, he was acquitted.

9. State v. Joseph Lucas

881-2773

July 12, 1989

St. Louis City, Judge Michael Godfrey presiding

Attorney for Defendant (1st chair)

Opposing counsel: Hon. Mary Ann Medler, former Assistant Circuit Attorney
Magistrate Judge, United States District Court
111 South 10th Street, St. Louis, MO 63101

Jury Trial

Defendant was charged with attempt robbery first degree. The state alleged that he walked into the Mercantile Bank in downtown St. Louis, presented a note asking for money and claimed to have a gun. He waited to be arrested; he had no weapon. The defense called a forensic psychologist to establish that the defendant suffered from a particular form of mental illness (he believed there was a conspiracy against him in government), alleging the defendant lacked the purpose to commit the crime; he only had the purpose to be arrested. The defendant was convicted of the lesser-included offense of attempt robbery second degree.

10. State v. Alvin Hennings

891-0155A

July 25, 1989

Division 20, St. Louis City, Judge Mary Kay Hoff presiding

Attorney for Defendant (1st chair)

Opposing counsel: James Leritz, former Assistant Circuit Attorney
Leritz, Plunkert & Bruning
One City Center, St. Louis, MO 63101

Jury Trial

Defendant was charged with possessing cocaine. After jury trial, he was acquitted.

11. State v. Terry Gatling

891-0563

August 7, 1989 and retried on October 5, 1989

St. Louis City, Judge presiding

Attorney for Defendant (1st chair)

Opposing counsel: James Leritz, former Assistant Circuit Attorney

Leritz, Plunkert & Bruning

One City Center, St. Louis, MO

63101

Jury Trial

Defendant was charged with possession of cocaine, which arose after he attempted to sell drugs to an undercover detective. This was the same detective that had arrested Mr. Gatling for his prior felony conviction. The defense introduced this evidence of a prior arrest, but the defendant did not testify. The first jury trial hung, as did the second. The defendant pled for time served.

12. State v. Dallas Womack

881-2107

September 25, 1989

Division, St. Louis City, Judge Jack Koehr presiding

Attorney for Defendant (1st chair)

Opposing counsel: Jeffrey Jamieson, former Assistant Circuit Attorney

Blackwell Sanders Peper Martin, LLP

720 Olive Street, Suite 2400, St. Louis, MO 63101

Jury Trial

Defendant was charged with thirty-three separate counts, arising from a successful escape and flight from the St. Louis Medium Security Institution. He was later arrested in Indiana. The state alleged that he entered a private home near Tower Grove Park, while evading authorities, and raped, sodomized and feloniously restrained two sisters (one a teenager and one child about age eight). In addition, he was charged with kidnapping a woman near Washington University and taking her (and her car) to Illinois. After jury trial, he was acquitted on two of the sex counts, convicted of 21 counts and had several counts directed out. He was sentenced to 777 years in prison.

13. State v. Roland Roper

891-0959

Nov. 13, 1989

Division 12, St. Louis City, Judge Michael Godfrey presiding

Attorney for Defendant (1st chair)

Opposing counsel: Daniel Bruntrager, former Assistant Circuit Attorney

Bruntrager and Billings, PC

1735 Big Bend Blvd., Brentwood, MO

63117

Jury Trial

The defendant was accused of a series of robberies in the second degree, where the state alleged he would wait by various automatic teller machines in the Central West End for elderly customers to appear. Mr. Roper was identified by a number of elderly victims as the person who snatched their purses or wallets, knocked them down and made good his escape. The state presented evidence that Mr. Roper confessed fully in writing. The defendant did not testify. He was acquitted of two counts, convicted as charged on one count and convicted on lessers in the remaining two counts.

14. State v. Oneal Stevenson

891-1050

Dec. 4, 1989

Division 21, St. Louis City, Judge Anna Forder presiding

Attorney for Defendant (1st chair)

Opposing counsel: Hon. Mary Ann Medler, former Assistant Circuit Attorney

Magistrate Judge, United States District Court

111 South 10th Street, St. Louis, MO 63101

Jury Trial

The defendant was charged with robbery in the first degree. The state alleged that Mr. Stevenson had waylaid the victim near the low rise projects near downtown St. Louis. The defendant did not testify and was acquitted.

15. State v. Roderick Burse

July 31, 1989

Division 24, St. Louis City, Judge presiding

Attorney for Defendant (1st chair)

Opposing counsel: Hon. Angela Turner-Quigless, former Assistant Circuit Attorney

Circuit Judge, 22nd Judicial Circuit

1114 South Market St., St. Louis, MO 63101

Jury Trial

The defendant was charged with Indecent Exposure (a misdemeanor) wherein the state alleged that the defendant was exposing himself to an undercover police officer in a bathroom in Tower Grove Park. Mr. Burse testified in his defense; the jury acquitted him.

16. State v. Willie Murphy

891-0271

January 16, 1990

Division, St. Louis City, Judge Brendan Ryan presiding

Attorney for Defendant (1st chair)

Opposing counsel: Joseph Warzycki, retired First Assistant Circuit Attorney

Office of the Circuit Attorney (*no current address*)

1114 Market Street, St. Louis, MO 63101

Jury Trial

The defendant was charged with Forcible Rape. The State alleged that the police responded to a 911 call for cries in an alley, and saw the defendant getting up off the victim to run away. The police captured Mr. Murphy at the end of the alley. The victim's panties were seized and tested at the police lab, enzyme-matching the defendant's semen to that of the sample seized in the panties. The defense had the sample tested and presented expert testimony that the seminal DNA in the panties was not that of the defendant. At trial, the victim admitted to prior sexual intercourse with another man, at an earlier time, and the defendant was convicted as charged.

17. State v. Raymond Eddington

891-1239

Jan. 4, 1990

Division, St. Louis City, Judge Thomas Mummert presiding

Attorney for Defendant (1st chair)

Opposing counsel: Robert Craddick, former Assistant Circuit Attorney
Reliant Care Management Company, L.L.C.
9200 Watson Road Suite 201
St. Louis, MO 63126-1528

Jury Trial

The defendant was charged with two counts of Murder First Degree, and two counts of Armed Criminal Action. The state alleged that Mr. Eddington was taking crack cocaine with his girlfriend, at her house, when they ran out of drugs. A disagreement ensued, after which Mr. Eddington shot his girlfriend in view of her young son. When the victim's brother emerged from a bedroom to find out what was happening, Mr. Eddington shot him also. The jury found the defendant guilty of two counts Murder Second Degree, and guilty as charged on both counts of Armed Criminal Action.

18. State v. Alfred Barbee

891-0208

Feb. 13, 1990

Division 21, St. Louis City, Judge Anna Forder presiding

Attorney for Defendant (1st chair)

Opposing counsel: Hon. Mary Ann Medler, former Assistant Circuit Attorney
Magistrate Judge, United States District Court
111 South 10th Street, St. Louis, MO 63101

Jury Trial

Mr. Barbee was charged with Forcible Rape and Forcible Sodomy. The state alleged that the victim was enjoying a happy hour at the Holiday Inn bar, on Jefferson and Market Streets, when she had to go to the restroom. While the victim was inside, Mr. Barbee entered the ladies' room, found the victim, raped her and sodomized her at knifepoint, and then departed. The police arrested him a short time later, and the victim positively identified him as her assailant. Mr. Barbee was convicted as charged.

19. State v. Sam Coleman

891-0076

Feb. 22, 1990

Division , St. Louis City, Judge presiding

Attorney for Defendant (1st chair)

Opposing counsel: Diana Wagner-Hilliard, former Assistant Circuit Attorney
Office of the Circuit Attorney (*current address unknown*)
1320 Market Street, St. Louis, MO 63103

Jury Trial

Defendant was charge with possessing cocaine. After jury trial, he was acquitted.

20. State v. Terry Gee

891-3291

April 16, 1990

Division, St. Louis City, Judge Edward Peek presiding

Attorney for Defendant (1st chair)

Opposing counsel: Daniel Bruntrager, former Assistant Circuit Attorney
Bruntrager and Billings, PC
1735 Big Bend Blvd., Brentwood, MO 63117

Jury Trial

Defendant was charged with three counts of Robbery First Degree and three counts of Armed Criminal Action, arising from three separate robberies occurring at convenience stores and gas stations. These robberies occurred on the same day, within 30 to 45 minutes of each other. Witnesses identified the defendant as the perpetrator. Defendant was convicted as charged.

21. State v. Michael Vincent

891-3402

May 21, 1990

Division, St. Louis City, Judge Brendan Ryan presiding

Attorney for Defendant (1st chair)

Opposing counsel: Stephen Moore, *deceased*
Office of the Circuit Attorney
1320 Market Street, St. Louis, MO 63103

Jury Trial

The defendant (a 16 year old certified juvenile) was charged with Murder First Degree and Armed Criminal Action. The state alleged that Mr. Vincent had obtained a rifle and, while visiting friends at an apartment building, waited downstairs for the victim to appear. When the victim came down the stairs, Mr. Vincent shot and killed him in view of multiple witnesses. No real motive was apparent. The defendant was convicted as charged and sentenced to life without parole.

22. State v. James Hinton
891-3025
June 12, 1990
Division, St. Louis City, Judge Anna Forder presiding
Attorney for Defendant (1st chair)
Opposing counsel: Michael Quinley, former Assistant Circuit Attorney
Assistant United States Attorney (ED IL)
9 Executive Drive, Fairview Heights, IL 62208

Jury Trial

The defendant was charged with Burglary First Degree. The state alleged that Mr. Hinton, who may have been very drunk (but not drunk enough to have a psychosis and thus a defense), entered a house where a young girl was sleeping. Mr. Hinton stumbled about for a while, then he took some items from the house and left. Mr. Hinton was convicted as charged.

23. State v. Jerome Guest
891-2183
June 25, 1990
St. Louis City, Judge Richard Mehan presiding
Attorney for Defendant (1st chair)
Opposing counsel: Stephen Moore, *deceased*
Office of the Circuit Attorney
1320 Market Street, St. Louis, MO 63103

Jury Trial

The defendant was charged with Murder First Degree and Armed Criminal Action. The state alleged that Mr. Guest shot and killed another young man on Lillian Street in St. Louis City. The eyewitness to the shooting testified; Mr. Guest did not. The defendant was acquitted on all charges.

24. State v. Troy White
891-2933B
July 17, 1990
Division 11, St. Louis City, Judge Floyd McBride presiding
Attorney for Defendant (1st chair)
Opposing counsel: Robert J. Isaccson, former Assistant Circuit Attorney
1034 South Brentwood Boulevard,
St. Louis, MO 63117

Jury Trial

Defendant was charged with stealing from a person. After jury trial, he was acquitted.

25. State v. Judge Johnson
901-0094
November 26, 1990
St. Louis City, Judge Thomas Mummert presiding

Attorney for Defendant (1st chair)

Opposing counsel: Michael Ravetta, former Assistant Circuit Attorney
Assistant Prosecuting Attorney
Jefferson County Prosecuting Attorney
PO Box 100, Hillsboro, MO 63050

Jury Trial

The defendant was charged with Rape. The state alleged that he forced himself upon a young lady of his acquaintance, who testified that she knew Mr. Johnson and had gone willingly to his house, but once there was not allowed to leave and had not consented to any sex. Mr. Johnson testified that the relationship was consensual; he was convicted by the jury.

26. State v. Vernon Brown

861-3056

January 7, 1991

St. Louis City, Judge Michael Godfrey presiding

Attorney for Defendant (2nd seat: Lead Trial Counsel was Karen Kraft)

Opposing counsel: Robert Garrison, former Assistant Circuit Attorney
Assistant United States Attorney (ED IL)
9 Executive Drive, Fairview Heights, IL 62208

Jury Trial

The defendant was charged with Murder First Degree and the state sought the death penalty. At the time of his trial, Mr. Brown was already residing on death row, as he had previously been convicted of strangling a young girl and placing her body in a dumpster. In this case, the state alleged that Mr. Brown had stabbed and strangled a young lady in her apartment, which happened to be in the same building that Mr. Brown also lived in. After a three week jury trial, Mr. Brown was convicted as charged and the jury recommended death.

27. State v. Lamont Bounds

901-0622

February 25, 1991

St. Louis City, Judge Charles Kitchin presiding

Attorney for Defendant (1st chair)

Opposing counsel: Robert Craddick, former Assistant Circuit Attorney
Reliant Care Management Company, L.L.C.
9200 Watson Road Suite 201
St. Louis, MO 63126-1528

Jury Trial

The defendant was charged with Murder First Degree and Armed Criminal Action. The state alleged that he came up behind the victim, who was working on his car, and shot him. The state presented an eyewitness to the shooting. Mr. Bounds was convicted as charged and sentenced to life without parole.

28. State v. Tim Johnston

891-3402

May 21, 1990

St. Louis City, Judge Thomas O'Shea presiding

Attorney for Defendant: 2nd chair (Lead Trial Counsel was Robert Wolfrum)

Opposing counsel: Joseph Warzycki, former First Assistant Circuit Attorney
Office of the Circuit Attorney (*current address unknown*)
1114 Market Street, St. Louis, MO 63101

Jury Trial

The defendant was charged with Murder First Degree and Armed Criminal Action. The state sought the death penalty. In this case, the state alleged that Mr. Johnson had gotten into a dispute with his girlfriend, the victim, at a bar. They fought in the parking lot. Mr. Johnson put her in the car and drove her home, stopping at various corners to beat her in full view of residents who would then call police. Once home, Mr. Johnson beat the victim some more on the front lawn, using lawn furniture, the butt of a gun and his boots. He also beat her inside the house. Eventually, he called for an ambulance and for help. The victim died. Mr. Johnson was convicted as charged and the jury recommended death.

29. State v. Harold Hayden

901-1149

September 4, 1991

St. Louis City, Judge Daniel Tillman presiding

Attorney for Defendant: 2nd chair (Lead Trial Counsel was Karen Kraft)

Opposing counsel: Nels Moss, former Assistant Circuit Attorney
Attorney at Law
212 South Meramec Ave., Clayton, MO 63105

Jury Trial

The defendant was charged with Murder First Degree and the state sought the death penalty. This case arose from an incident in the Central West End, when a gentleman came out of a bookstore after making a purchase and was robbed, shot and killed. The defendant was identified as the shooter; he was convicted of Murder Second Degree (felony murder).

30. State v. James Chambers

CR182-418

October 28, 1991

Cole County, Judge James McHenry presiding

Attorney for Defendant: 2nd chair (Lead Trial Counsel was Karen Kraft)

Opposing counsel: Hon. Richard Callahan, former Cole County Prosecuting Attorney,
Circuit Judge
301 East High Street, Jefferson City, MO 65101

Jury Trial

The defendant was charged with Murder First Degree arising out of a bar fight in Jefferson County. The case had been tried twice previously, death sentences resulted and the courts had reversed twice

before. The case was moved, on a change of venue, to Cole County and was tried to a jury again. The state alleged that Mr. Chambers became involved in a bar fight with the victim. The victim left the bar, Mr. Chambers followed and Mr. Chambers shot the victim outside in the parking lot. The defense argued self-defense. The jury found Mr. Chambers guilty as charged and recommended the death penalty.

31. State v. Jahn Parker

CR0190-026704F

February 24, 1992

Boone County, Judge Ellen Roper presiding

Attorney for Defendant: Co-counsel (Co-counsel was Joseph Green)

Opposing counsel: Joe Mosely, former Prosecuting Attorney

Boone County Prosecuting Attorney

301 E. High Street Room 400

Columbia, MO 65101

Hon. Richard Callahan, former Cole County Prosecuting Attorney,
Circuit Judge

301 East High Street, Jefferson City, MO 65101

Jury Trial

The defendant was charged with Murder First Degree, and the state sought the death penalty. Mr. Parker lived in Columbia and was in a biracial and tumultuous relationship with the daughter of a prominent Boone County family. Mr. Parker had previously been prosecuted for assaulting the victim and violating an ex parte order of protection. The parties were not seeing each other at the time of the murder, but did have contact. The state alleged that Mr. Parker was threatening the victim and stalking her. The state presented evidence that Mr. Parker obtained a gun, and had a friend drive him to victim's house the night before he was scheduled to appear in court to be sentenced on the probation violation case wherein she was also the victim. Later, in the morning, she was found in her car, shot through the temple. The jury was selected from St. Charles County on a change of venue and the case was tried in Boone County. The jury found the defendant guilty as charged and recommended the death penalty.

32. State v. Matthew Funke

90CR-7178

January 4, 1993

St. Louis County, Judge James Hartenbach presiding

Attorney for Defendant: Co-counsel (Co-counsel was Joseph Green)

Opposing counsel: John DeVouten and Michael Archer (former)

Assistant Prosecuting Attorneys

St. Louis County Prosecuting Attorney

100 South Central Avenue 2nd Floor

Clayton, MO 63105

Jury Trial

Defendant was charged with Murder First Degree and the state sought the death penalty. Mr. Funke was detained facing two murder cases; one in which he was charged with raping and killing a young girl named Che Simms, and this case in which he was accused of beating a homosexual man in the head with a hammer while in Mr. Funke's basement. After this homicide, Mr. Funke attempted to clean up the basement and then he disposed of the body in a rubber raft (cut open to make a bag). The defendant made a full confession to police on videotape. The defense was self-defense, until Mr. Funke took the stand and denied ever being in the basement, seeing the deceased, or confessing to police. The jury found defendant guilty as charged, but recommended life without parole.

33. State v. Antonio Richardson
 911-1758C
 March 15, 1993
 St. Louis City, Judge Jack Koehr presiding
 Attorney for Defendant: Co-counsel (Co-counsel was Caterina DiTraglia)
 Opposing counsel: Nels Moss, former Assistant Circuit Attorney
 Attorney at Law
 212 South Meramec Ave., Clayton, MO 63105

Jury Trial

The defendant was a certified juvenile charged with two counts of Murder First Degree and various robberies, sexual offenses and assaults arising out of events occurring on the Chain of Rocks Bridge. The state alleged that four codefendants were on the Chain of Rocks Bridge when they met up with two young ladies and their male cousin. The codefendants robbed them, raped the ladies, had all the young ladies remove their clothing and pushed all three off the bridge. The only survivor was the young man, who swam to shore. Initially, he was a suspect but later the investigation led to the four codefendants, one of whom agreed to testify for the state. Mr. Richardson was the last of the defendants to have his trial. The jury found him guilty as charged for one murder, found him guilty of murder second degree for the other murder, and guilty on remaining counts. The jury hung on punishment, and the judge imposed the death penalty.

34. State v. Duane Simmons
 911-2868
 September 13, 1993
 St. Louis City, Judge Michael Calvin presiding
 Attorney for Defendant: Co-counsel (Co-counsel was Caterina DiTraglia)
 Opposing counsel: Robert Craddick, former Assistant Circuit Attorney
 Reliant Care Management Company, L.L.C.
 9200 Watson Road Suite 201
 St. Louis, MO 63126-1528

Jury Trial

The defendant was charged with Murder First Degree, two counts Armed Criminal Action and Assault First Degree. The state sought the death penalty, alleging that Mr. Simmons was home with his mother and young 8-year-old brother one night. Mother and brother were lying on a mattress, watching TV. The defendant came from the kitchen and began stabbing them with

knives. He stabbed his mother over 60 times, chasing her around the house. She bled to death in the living room. He stabbed his young brother, who survived to testify against him at trial. The defendant used every knife in the house, breaking the handles off them and cutting his own hands as he continued to attack the victims. The defense, through cross-examination and testimony of experts called by the defense, presented evidence that the defendant was high on drugs at the time. The jury found Mr. Simmons guilty of murder second degree and recommended the maximum sentences on all counts.

35. State v. Mark Still

931-1682

May 1, 1995

Division 20, St. Louis City, Judge Sherri Sullivan presiding

Attorney for defendant (1st chair)

Opposing counsel: Donald Tyson, Assistant Circuit Attorney
Office of the Circuit Attorney
1114 Market Street, St. Louis, MO 63101

Jury Trial

Defendant was charged with Murder First Degree and Armed Criminal Action. The state alleged that he loaded a shotgun and shot a young lady in the chest, returned to his closet for more shells, re-loaded and shot her again. The defendant claimed self-defense, as the victim argued with him and threw a telephone at him. The jury found Mr. Still guilty as charged.

36. State v. Roderick Forrest

931-2988

May 15, 1995

Division 13, St. Louis City, Judge Edward Peek presiding

Attorney for defendant (1st chair)

Opposing counsel: Donald Tyson, Assistant Circuit Attorney
Office of the Circuit Attorney
1114 Market Street, St. Louis, MO 63101

Jury Trial

Defendant was charged with Murder I and Armed Criminal Action. The state alleged that Mr. Forrest, acting with his codefendant, planned to rob a pizza deliveryman. To accomplish this, they ordered a pizza delivered to the house a few doors down. They waited for the pizza deliveryman and robbed him. In the course of the robbery, Mr. Forrest shot the pizza delivery man, who died minutes later on the parking lot of the "Sip 'n Swirl" Restaurant on Chippewa Street. Mr. Forrest and his codefendant retrieved the pizza order and shared it with other state's witnesses while they watched the police process the scene. Mr. Forrest was convicted as charged.

37. State v. Sheron Davis

991-3429A

October 16, 2000

St. Louis City, Judge Joan Burger presiding

Attorney for defendant (1st chair)

Opposing counsel: Dwight Warren, Assistant Circuit Attorney
Office of the Circuit Attorney
1114 Market Street, St. Louis, MO 63101

Jury Trial

Defendant was charged with Murder First Degree and Armed Criminal Action arising from a drive-by shooting wherein the State alleged that the defendant, acting together with his co-defendant, drove behind the victim's car, shooting and killing the victim. The State presented eye-witness testimony and fingerprint evidence from the shooter's car, placing the defendant in the car and shooting the victim. The defendant was convicted as charged.

38. State v. Nevelyn Stokes

991-3429A

October 16, 2000

Division 23, St. Louis City, Judge Donald McCullin presiding

Attorney for defendant (1st chair)

Opposing counsel: Dwight Warren, Assistant Circuit Attorney
Office of the Circuit Attorney
1114 Market Street, St. Louis, MO 63101

Jury Trial

Defendant was charged with six counts of Murder First Degree and one count of Arson First Degree. The state alleged that he had lit an apartment on fire and, as a result, six children inside the apartment died. The defendant testified that he had meant to start the fire, as an act of revenge, but did not know that anyone was inside. The defendant was found guilty of the lesser offenses of Murder Second Degree and guilty as charged on the Arson First Degree.

APPENDIX B: APPELLATE PRACTICE

Attached please find a copy of the Petition for Writ of Prohibition which I filed on behalf of D.C.

Following that Petition are the Suggestions in Support of the Petition. A review of these materials will explain the facts that brought this situation to the courts. Finally, I have attached a copy of the written opinion of the Missouri Supreme Court in ruling on the matter. These materials demonstrate my experience in the courtroom, my abilities to make a record, to preserve that record through hearing and to effectively present the facts and law to appellate courts in writing and by oral argument.

IN THE EASTERN DISTRICT COURT OF APPEALS
STATE OF MISSOURI

STATE OF MISSOURI

Cause No. _____

Relator.

v.

THE HON. MAURA McSHANE,
Circuit Judge for St. Louis County,
Respondent.

PETITION FOR WRIT OF PROHIBITION

Comes now Relator, [REDACTED], by and through his attorney, Kristine A. Kerr, Assistant Public Defender, and pursuant to Article I, Section 12, of the Missouri Constitution and Missouri Supreme Court Rules 84.22 through 84.26 and Rule 97, requests that this Court grant a preliminary writ of prohibition, staying any further proceedings in the underlying cause, In the Interest of [REDACTED], Cause No. [REDACTED], St. Louis County Family Court, and grant [REDACTED] the opportunity for oral arguments in support of a permanent writ of prohibition staying proceedings in this cause on the grounds that Relator is not mentally competent to proceed.

STATEMENT OF THE FACTS

In support of this petition, Relator, through counsel, states:

1. Relator is a juvenile, born March 8, 1986, and under the jurisdiction of St. Louis County Family Court.
2. Relator is confined in St. Louis County Juvenile Detention, with two pending referrals before St. Louis County Juvenile Court (Robbery in the Second Degree and Tampering in the Second Degree, alleged to have occurred on November 20, 2002, and Robbery in the First Degree, alleged to have occurred on December 25, 2002).
3. The State has filed motions pursuant to Section 211.071, Revised Statutes of Missouri,

requesting a hearing before St. Louis County Family Court to determine whether or not the Relator is a proper subject to be dealt with under the provisions of the Juvenile Code. The State seeks to have the Relator prosecuted under the general law, as an adult, upon dismissal of the proceedings in Family Court ("certification").

4. This certification hearing was set before the Honorable Maura McShane, Division 2, St. Louis County Circuit Court, on April 25, 2003.
5. Counsel for Relator obtained the services of Dr. Jefferies Caul, to evaluate Relator for his competency to proceed, based on his history of moderate mental retardation. This evaluation was performed in May, 2003, with the permission and knowledge of the Court and counsel for the State.
6. The scheduled certification hearing of April 25, 2003, was continued to June 19, 2003, to permit this psychological evaluation of Relator.
7. Dr. Caul completed his evaluation of Relator; copies of all reports were provided to the State and the Court. It is Dr. Caul's opinion, to a reasonable degree of psychological certainty, that Relator is not competent to proceed in the certification proceedings pending against him.
8. The certification hearing was again continued at defense counsel's request and by consent of the parties, as Dr. Caul was not available on June 19, 2003; the new date set was July 18, 2003.
9. On June 19, 2003, the State requested and the Court ordered another psychological evaluation of Relator to determine his competency to proceed in this cause, pursuant to Section 211.161 RSMo. The Court ordered this evaluation to be done by St. Louis County Family and Clinical Services, who were to come to court at the next setting and testify about their findings.
10. This court-ordered evaluation was performed by Dr. Margo Layton. Dr. Layton had previously tested Relator, and prepared her report about her findings. This first report was dated February 19, 2003. Dr. Layton re-interviewed and re-examined Relator, pursuant to court order, and prepared a second report. This report was dated July 14,

2003. While Dr. Layton felt that the final decision on Relator's competency to proceed was the Court's function, not hers, in Dr. Layton's written conclusions she believes that "interview and testing raise significant questions about [REDACTED]'s capacity to fully participate in the juvenile proceedings." She felt that Relator's "abilities to work collaboratively with his attorney could be compromised by his difficulties with verbal comprehension and expression and complex processing."

11. The Court held an evidentiary hearing on this issue of Relator's competency to proceed in this underlying cause on July 18, 2003. The transcript relates the full evidence adduced. Relator called Dr. Jefferies Caul and Dr. Margot Layton to testify in this cause. *Inter alia*, both experts agreed that:
 1. Relator is classified as "moderately mentally retarded" under the criteria established the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition" (DSM IV - TR).
 2. Relator's full scale IQ is consistently measured at 46 (Dr. Layton's findings in February, 2003, and in July, 2003; Dr. Caul's findings in May, 2003).
 3. Relator's IQ and other functioning tests places him at less than .1% relative to his age level peers; more than 99 out of 100 peers will achieve a higher score.
 4. Relator is severely and uniformly developmentally delayed. There are no indications that he can function at a higher level. Some of his academic abilities fall below that of a two-year old. Relator has deficits in acquiring and retaining information, in an academic setting as well as in everyday experience. Relator has no ability to think in abstract terms or understand abstract ideas. This concrete thinking is consistent with his diagnosis, IQ and testing.
12. Specifically, Dr. Caul testified that:
 1. The DSM IV discusses multiple levels of mental retardation. "Mild Mental Retardation" is the largest segment of the mentally retarded population, comprising about 80 or 85% of those with this disorder. The next lowest segment is the "Moderately Mentally Retarded," comprising about 10% of the mentally retarded

population (Tr. p. 14). It is this lower segment in which Relator finds himself.

2. Most individuals with this level of moderate mental retardation acquire their communication skills during early childhood (Tr. p. 15). They are unlikely to progress beyond the second grade in academic subjects (Tr. p. 16). They may learn to travel independently in familiar places (Tr. p. 16). In their adult years, the majority of the moderately mentally retarded may adapt well to life in the community, usually in supervised settings such as a group home (Tr. p. 15).
3. When tested by Dr. Caul, [REDACTED]'s language was very simple, immature and concrete for his age (Tr. p. 13). He had difficulties finding the right words (Tr. p. 13). He made verb tense errors (Tr. p. 13). [REDACTED]'s skills were uniformly depressed (Tr. p. 19). His fund of information was poor; for example, Relator told Dr. Caul that the shape of a ball was a square (Tr. p. 20), that Monday followed Saturday (Tr. p. 20) and that there were twelve weeks in a year (Tr. p. 20). [REDACTED] did not know why we wash clothes (Tr. p. 21), nor why it is important to cook certain foods (Tr. p. 21). [REDACTED] had problems with abstract reasoning skills, such as perceiving meaningful relationships between objects; he was unable to see a relationship between socks and shoes, or the colors yellow and green (Tr. p. 22).
4. To measuring [REDACTED]'s receptive language skills (his ability to understand words spoken to him), he was given the Peabody Picture Vocabulary test (Tr. p. 22). When asked to pick out the picture of a cow, amongst four pictures, he could not do that (Tr. 23). He also could not pick out the picture of the drum (Tr. p. 24) or the cage (Tr. p. 24) when prompted with the name of the item sought. [REDACTED]'s age equivalent for that test was below one year, nine months (Tr. p. 25).
5. Dr. Caul administered the Expressive Vocabulary Test (EVT) to [REDACTED], which is meant to test how well a person can express themselves; how well they can put their thoughts into words (Tr. p. 25). [REDACTED] identified the elephant as a "lion" (Tr. p. 28) and a bunny rabbit as a "cat" (Tr. p. 28). [REDACTED]'s age equivalency on the EVT was two years, six months (Tr. p. 29).

6. [REDACTED]'s short term memory skills are extremely limited (Tr. p. 30). He was unable to listen to a string of three digits forward, remember them, and repeat them back (Tr. p. 30). For example, [REDACTED] could not remember and repeat "five, eight, two" or "six, nine, four" (Tr. p. 31). He was inconsistent at repeating two digits forward, placing him below a three-year-old level (Tr. p. 34).
7. [REDACTED] has not mastered basic addition and subtraction skills; he can only count blocks placed before him on a one-to-one correspondence (Tr. p. 32).
8. Dr. Caul could not even test [REDACTED]'s psychomotor processing speed, because [REDACTED] could not even master the task for the test (Tr. 35). His score was zero (Tr. 35).
9. Dr. Caul discussed [REDACTED]'s academic skills, which he measured using the Woodcock-Johnson Tests of Achievement, Third Edition (Tr. 41). [REDACTED] was only able to read a few isolated words (Tr. 41), such as "in, can, was, have, when and about" (Tr. 42). He does not consistently know his letters (Tr. 42). For example, he pointed to "B" when asked to match the letter "P" at the top of the card (Tr. 43). [REDACTED] was not able to identify the letter "B" or "C" (Tr. 44). He was unable to identify "K" and "R" (Tr. 44-45). These are skills we would ordinarily see emerging the preschool age level (Tr. 45), such as three and one-half or four years old (Tr. 45). He could not correctly read the phrase "One Book" and point to the picture of the book (Tr. 46). He could not read any two-word phrases or sentences in the test (Tr. 46).
10. The Broad Reading Scales generated a standard score of "2" which falls well below a five year, six month age level of development (Tr. 47). Spelling skills fell at a four year, nine month level (Tr. 48). Reading comprehension fell at a four year, seven month level (Tr. 48).
11. With regards to competency to proceed, [REDACTED] was able to say that a lawyer was to "help you, try to get you out of here" (Tr. 48). When asked about the Judge's role, he responded "Judge send you away" (Tr. 48). That was the limit of his

understanding. [REDACTED]'s ability to communicate his own thoughts is severely limited (Tr. 51), falling at a two year, six month level (Tr. 52). His abilities to receive language and understand it are also severely limited (Tr. 52). These language skills fall into a one year, nine month level (Tr. 52). His short-term memory skills are so limited that he is not able to follow any complex interactions at all, especially in a legal setting (Tr. 52).

13. Specifically, Dr. Layton testified that:

1. She had tested Relator in February of this year (Tr. 86) and again, by court order, in June of this year.
2. Dr. Layton administered the various tests to [REDACTED] as part of the battery of tests which comprise the Weschler, he scored a "one" on the test measuring general information (Tr. 90), which is very significantly below average and the kind of score which would place Darnell into below the first percentile for overall scoring (Tr. 90). Darnell also received a "one" on the vocabulary test, which is measures basic informational skills obtained from the school experience (Tr. 90-91). In another sub-test, which measures [REDACTED]'s ability to understand information from everyday experience, he also obtained a "one" (Tr. 91). That is the lowest scalable score; [REDACTED] could not score any lower on the scale (Tr. 91). [REDACTED]'s best test results was block design, in which he obtained a score of "four" (Tr. 91). In terms of ages, this best test result is equivalent to a chronological mental age of 10 year, six months (Tr. 91).
3. She had reviewed Dr. Rosso's testing in 2001 and 2002, and found it fairly consistent with her own (Tr. 95). She reviewed Dr. Caul's report and found it consistent with her own (Tr. 95-96).
4. Further, Relator is one of the five (or less) most delayed individuals she has ever tested in her twenty-odd years of practice working with St. Louis County Courts (Tr. 96).
5. She has been trained to detect malingering (Tr. 94); she did not believe Relator to

be malingering (Tr. 94).

6. Dr. Layton viewed the decision on competency to be that of the Court's, so she did not specifically make a finding on that issue (Tr. 96). Dr. Layton believes, however, that it could be difficult for [REDACTED] to completely follow the proceedings which would occur in a courtroom during a trial or hearing (Tr. 97). If the vocabulary in the courtroom goes above a third or fourth grade level, then [REDACTED] might not understand it (Tr. 97). There are a number of issues where verbal comprehension comes into play when considering a defendant's competency to proceed (Tr. 98). Dr. Layton's testing results raised significant questions about [REDACTED]'s capacity to fully participate in the juvenile proceedings (Tr. 98-99).
7. [REDACTED] has a compromised ability to work collaboratively with his attorney (Tr. 99) and to make informed decisions about his case (Tr. 99). This could be a significant impact on [REDACTED]'s ability to make informed decisions about his case (Tr. 99).
8. Even though she believes that she is not able to render an opinion on [REDACTED] competency to proceed, Dr. Layton cannot rule out the possibility that [REDACTED] is not competent to proceed (Tr. 100).
9. Based on her testing and evaluation, it would surprise Dr. Layton that Relator was capable of writing JO's Exhibit 1 (Tr. 115), although she did not ask him to write anything for her (Tr. 113).
14. Relator did not testify, nor did he address the Court in any way during this hearing.
15. The state presented no expert psychological testimony or test results to contradict Relator's expert testimony (Tr. 148).
16. The State introduced one exhibit during this hearing over Relator's objections, JO's Exhibit 1, which was a one page grievance form purportedly written by Relator. The State called one witness, the Deputy Juvenile Officer (DJO), who testified that she had retrieved this grievance form on the morning of the hearing, that she had not personally observed Relator write this form (Tr. 150), that grievance forms were

supposed to be written personally by the complaining party, but that she was aware of at least one situation unrelated to this case where the policy had not been followed.

17. Further, the DJO testified that part of her job was to review letters which left the detention facility, purportedly written by the detained juveniles. She testified that she had reviewed letters in this case, supposedly written by Relator to other girls (Tr. 143-144). She had reviewed several such letters during the course of Relator's detention. The DJO had not personally observed Relator write any letters, nor did she keep copies for future reference. None were provided for examination by the defense or the court. None were disclosed prior to the hearing (Tr. 148). No reports were provided pertaining to this evidence. The DJO testified that she asked Relator one time, in February of 2003, whether he had written the letters (Tr. 144). The DJO was directed to ask this question by her supervisor, because Dr. Layton's first psychological evaluation had come in and reported a very low level of functioning on the part of Relator. In response to this question, Relator told his DJO that he was the author of the letters to date (Tr. 127). The DJO acknowledged that she was not a psychological professional and was not trained in psychological evaluations, so she is not qualified to discuss this matter (Tr. 153). She acknowledged that Relator could have been lying to her, or misunderstood her question in that he obtained the help of friends to write the letters he wanted to write (Tr. 152-153). She acknowledged that, for Relator to have written those letters as she described, this would have been highly inconsistent with the testing results from two trained professionals (Tr. 151).
18. The Court took this matter under submission. On July 21, the Court issued its order finding Relator competent to proceed, stating as grounds only that: "The issue before the Court is the juvenile's competency only for a certification hearing. During the hearing, the Court heard the evidence and had the opportunity to observe the juvenile. At one point during the hearing juvenile's attorney showed him a document (later marked JO's Exhibit 1) and had a conversation with the juvenile regarding the document. The Court finds that although the juvenile may be in the moderately

retardation range, he is competent to understand the certification hearing and to consult with his attorney."

RELIEF SOUGHT

Relator requests that this Court issue a preliminary writ of prohibition, staying any further proceedings in the underlying cause, In the Interest of [REDACTED], Cause No. [REDACTED], St. Louis County Family Court, and grant Darnell Clemons the opportunity for oral arguments in support of a permanent writ of prohibition staying proceedings in this cause on the grounds that Relator is not competent to proceed in the certification hearing presently pending in St. Louis County Family Court.

STATEMENT OF REASONS WHY THE WRIT OF PROHIBITION SHOULD ISSUE

1. The Court's ruling, that Relator is competent to proceed, is an abuse of the Court's discretion in that it is not supported by substantial evidence, is not based on any formal evidence adduced before the Court, is based only on speculation about the content, quality and degree of a single, privileged, private conversation between Relator and his attorney, and does not take into consideration Relator's abilities to understand or appreciate the nature of the proceedings against him. In so ruling, the Court's actions have violated Relator's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article I, Sections 10 and 18(a) of the Missouri Constitution and the laws of Missouri (*see* Section 552.020 RSMo 1986).
2. The Court's order is insufficient as a matter of law, in that there is no legal basis to find that Relator is competent to understand the courtroom proceedings, a very different and separate issue from being able to communicate meaningfully with this counsel. All evidence on this prong of competency was presented by the defense, showed that Relator could not understand courtroom proceedings, and was uncontroverted by any evidence from the State. In making this finding, with no evidence to support it, the Court's order violates Relator's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article I, Sections 10

and 18(a) of the Missouri Constitution and the laws of Missouri (*see* Section 552.020 RSMo 1986).

3. The Court's ruling causes irreparable harm to Relator, in that it forces him to proceed while incompetent in the above-described certification hearing in violation of his rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article I, Sections 10 and 18(a) of the Missouri Constitution and the laws of Missouri (Section 552.020 RSMo).

Wherefore, for the reasons stated above, both cumulatively and individually, as further discussed in Relator's "Suggestions in Support," Relator requests the relief sought above.

Respectfully submitted,

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Certificate of Service

I certify that a true copy of the above and foregoing was personally served on Nancy Sido, Assistant Prosecuting Attorney, St. Louis County Prosecuting Attorney, and the Honorable Maura McShane, Circuit Judge, St. Louis County Family Court, Division 2, , by delivering same to their place of business at the St. Louis County Juvenile Court, 501 South Brentwood, Clayton, MO 63105, all on this ____ day of _____, 20__.

Kristine Kerr

IN THE EASTERN DISTRICT COURT OF APPEALS
STATE OF MISSOURI

STATE OF MISSOURI

ex rel. [REDACTED]

Relator.

v.

THE HON. MAURA McSHANE,
Circuit Judge for St. Louis County,
Respondent.

Cause No. _____

**SUGGESTIONS IN SUPPORT OF RELATOR'S PETITION FOR WRIT OF
PROHIBITION**

Comes now Relator, [REDACTED], by and through his attorney, Kristine A. Kerr, Assistant Public Defender, and offers the following Suggestions in Support of his Petition for a Writ of Prohibition:

I. The Court's ruling, finding Relator competent to proceed, is an abuse of discretion in that there is no substantial evidence to support it, is based on the Court's speculation about a single observed communication between Relator and his counsel, and does not take into consideration Relator's abilities to understand or appreciate the nature of the proceedings against him.

"Prohibition is a discretionary writ that lies only to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-judicial power." *State ex rel Linthicum v. Calvin*, 57 S.W.3d 855, 857 (Mo. banc 2001). "The general rule is that, if a court is 'entitled to exercise discretion in the matter before it, a writ of prohibition cannot prevent or control the manner of its exercise, so long as the exercise is within the jurisdiction of the court.'" *State ex rel Kinder v. McShane*, 87 S.W.3d 256 (Mo. banc 2002). But "[p]rohibition will lie when there is an important

question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision." *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. banc 1994).

The issue is whether the Court had any evidence before it upon which it could base its ruling. The Court's decision, finding Relator competent to proceed, is against the overwhelming weight of the evidence, is arbitrary, and violates the logic of the circumstances; the Court's order violates [REDACTED]'s right to be competent to assist his counsel and to understand the proceedings against him.

Waiver of jurisdiction by the juvenile court is a critically important stage that requires procedures that "satisfy the basic requirements of due process and fairness". *Wilkins v. Bowersox*, 933 F.Supp 1496, (W.D, 1996), *Kent v. United States*, 86 S.Ct. 1045 (1966), 1053-1055; See also *State ex. rel. D V v. Cook*, 495 S.W.2d 127 (Mo. App. 1973). Specifically, the Court noted that due process requires effective assistance of counsel when the result is one of "such tremendous consequences" (emphasis added). *Id.* at 1053; *In re Gault*, 87 S.Ct. 1428 (1967). This right to counsel is codified in Section 211.211 of the Missouri Revised Statutes and in Supreme Court Rule 116.01(a), which state that juveniles have a right to counsel in all proceedings.

"A right to counsel is an 'empty formality' if it is not also assumed that the assistance of counsel must be effective. *In the Interest of J.C., Jr.*, 781 S.W.2d 226, 228 (Mo. App. 1989).

The right to effective assistance of counsel is meaningless if the client is not competent to understand the nature of the proceeding or to consult with counsel. *Pate v. Robinson*, 86 S.Ct. 836 (1966); *Vaughn v. Morgett*, 526 S.W.2d 434 (Mo. Ct. App. 1975), 436. The United States Supreme Court has held, therefore, that an incompetent person cannot be subjected to trial. *Drope v. United States*, 95 S.Ct. 896 (1975), 903. The United States Constitution prohibits the prosecution of a defendant who is not competent to stand trial. U.S.C.A. Const. Amend. 14, *State v. Johns*, 34 S.W.3d 96 (Mo., 2000).

The United States Supreme Court has also held that the standard for competency to stand trial must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him. *Dusky v. United States*, 80 S.Ct. 788 (1960), 788-789. Similarly, "such a right becomes meaningless 'as the sound of tinkling brass' if an accused lacks mental capacity to knowingly and intelligently confer with counsel respecting the charges or issues brought against him and to assist counsel by means of supplying information pertinent to those issues. *State ex rel. Vaughn v. Morgett*, 526 S.W.2d 434, 436 (Mo. App. 1975)." *State ex rel. Reed v. Frawley*, 59 S.W.3d. 496 (Mo. S. Ct. 2001).

In this case, the Court's order simply ignores the testimony and unanimous testing results of two psychological professionals, both of whom agree about the very low level of Relator's intellectual functioning in this case. The testimony from both experts is unanimous; the level of Relator's intellectual functioning is such that he will certainly have serious difficulties in conferring with counsel, or understanding the nature of the proceedings against him.

"A trial court's determination of competency is one of fact that must stand unless there is no substantial evidence to support it." *State v. Frezzell*, 958 S.W.2d 101 (Mo. App. WD 1998). In reviewing the sufficiency of a trial court's determination of competency, a reviewing court does not weigh the evidence but accepts as true all the evidence and reasonable inferences that tend to support the finding. *Id.* A reviewing court must determine "whether a reasonable judge, in the same situation as the trial court, should have experienced doubt about the accused's competency to stand trial." *Frezzell*, quoting *State v. Tokar*, 918 S.W.2d 753, 762-63 (Mo. banc 1996), ((quoting *Branscomb v. Norris*, 47 F.3d 258, 261 (8th Cir. 1995), cert. denied, 515 U.S. 1109 (1995))). "If a ruling clearly violates the logic of the circumstances or is arbitrary or unreasonable, it is an abuse of discretion." *Wibberg v. State*, 957 S.W.2d 504, 506 (Mo. App.1997).

While it is fitting and proper that any reviewing court would hesitate to disturb the

trial court's findings from an evidentiary hearing, the reviewing court should not ignore a situation where the lower court order is contradicted by the overwhelming majority of the evidence. It may be helpful to contrast the Court's ruling, and the scant basis therefore, with some of the evidence adduced at the hearing which relates to the Relator's mental status, laid out at length in the Relator's Statement of Facts and in the transcript of the hearing.

In this case, there is simply no substantial evidence or reasonable inferences to support the Court's decision. The Court bases its ruling on one perceived, privileged, private, and *soto voce* communication between Relator and counsel. Although the record is silent on this point, counsel can attest that this was the single and only time that counsel directed any remark to Relator while court was in session during the course of the entire four hour hearing. Counsel spoke four words; Relator responded with one. The Court's ruling assumes as true, without evidence or other basis, that Relator understood the communication, and was able to give meaningful information back to counsel in response. In fact, both expert witnesses testified that Relator is not able to understand abstract ideas, but could communicate in a concrete fashion. The Court could have no idea whether the nature of any words spoken privately to Relator, by counsel, would have been abstract or concrete in nature.

The Court could not possibly know what was being discussed or whether meaningful information was being exchanged, as she was observing from a short distance a privileged, private communication between attorney and client at counsel table. In fact, the testimony of both expert witnesses makes it very likely that Relator was *not* understanding the nature of the proceedings or able to communicate meaningfully with counsel. The Court's ruling does not articulate what, if anything, counsel for Relator was able to do in response after Relator spoke with her.

Further, even assuming *arguendo* that the Court's assumptions are accurate, as a reviewing court is required to do, the Court's ruling still does not address the requirement that Relator be able to understand the proceedings against him. The Court's ruling finds

that Relator can understand the proceedings, without having any basis for that conclusion in the evidence, testimony or record before her. The Court's order merely draws that conclusion, without explaining why the Court believes this to be true. While it can be permissible for the Court to consider the demeanor of a defendant in deciding competency to proceed, in this matter the Court based its conclusions on assumptions only, ignoring the weight of the evidence. Other than speaking one word in response to his counsel, Relator sat quietly in court the entire time and did nothing. The Court could have no idea whether he understood the proceedings or not. The Court's conclusions and order violate the logic of the circumstances.

Finally, if the Court was somehow considering the testimony of the DJO that Relator was capable of writing a grievance form, together with JO's Exhibit 1, or other letters to young ladies, as a deciding factor in its decision (which the Court does not mention), then the Court's conclusions also fly in the face of the undisputed psychological testimony. Both doctors were clear that Relator's mental condition would render it extremely unlikely, if not impossible, for him to have authored the grievance form. He simply does not possess the skills or capacities. It flies in the face of logic to say that Relator authored the grievance form by himself, spelling many words correctly, including the word "deodorant" when, according to two expert witnesses, he is not able to even read that word or words half that length. To argue that Relator authored that grievance by himself must result in the impossible conclusion that Relator has successfully bamboozled the Special School District and three trained psychologists, for several years in a row, without being detected as a malingerer.

For these reasons, the ruling cannot stand.

II. The Court's order is insufficient as a matter of law, in that there is no legal basis to find that Relator is competent to understand the courtroom proceedings, which is a very different and separate issue from being able to communicate meaningfully with this counsel.

The Court, in its order, found two-fold; the Court found that Relator was

competant to consult with his attorney and competant to understand the certification hearing. The factual basis for this ruling is based only on Relator's ability to consult with counsel, which the Court believed it had observed. This factual basis (communication with counsel) does not address the second finding, that Relator was competant to understand courtroom procedure. Competency to proceed requires that a defendant be competant as to both aspects: "The right to effective assistance of counsel is meaningless if the client is not competent to understand the nature of the proceeding *or* to consult with counsel." (emphasis added) *Pate v. Robinson*, 86 S.Ct. 836 (1966).

Relator presented two expert witnesses who agreed that, at a minimum, Relator is seriously impaired in his abilities to understand the courtroom procedures and other legal matters that will occur in court during a certification hearing. This testimony was uncontradicted by any affirmative evidence on the part of the State; since there is the evidence is uncontroverted, a reviewing court is not bound to give the trial court's findings the same deference as necessary in a finding based on credibility of witnesses. The issue becomes a matter of law, not an issue of trial court discretion. "We note that we defer to the determination of the trial court as to credibility of witnesses. *Hinnah v. Director of Revenue*, 77 S.W.3d 616, 620 (Mo. banc 2002). However, if the evidence is uncontroverted, there is no need for such deference. *Id.*, (citing *Hampton v. Director of Revenue*, 22 S.W.3d 217, 220 (Mo. App. 2000))." *Bucher v. Director of Revenue*, 98 S.W.3d 79 (Mo. App. ED 2003).

The only evidence presented in court as to Relator's ability to understand courtroom proceedings and legal matters came from Relator. All of that evidence points to the fact that Relator is not competant to proceed in that he cannot understand what is happening around him in the courtroom, notwithstanding the Court's findings on his ability (or lack thereof) to communicate with counsel. As an issue of law, the Court's order is not supported by any affirmative evidence at all and, thus, cannot stand.

III. The Court's ruling causes irreparable harm to Relator, in that it forces him to proceed while mentally incompetent in the above-described certification hearing.

As discussed above, due process and effective assistance of counsel considerations require that Relator be competent to proceed in the certification proceedings against him. If the requested writ does not issue, Relator will be forced to proceed in his certification hearing without any remedy available to him. The decision to certify a juvenile is not a final order, subject to appeal, in that it is a dismissal to allow prosecution under the general law. *In re T.J.H.*, 497 S.W.2d 433 (Mo. banc 1972). Once certified, he can file a motion to dismiss in Circuit Court, but the bell will already be rung. For a discussion of why this request for relief by way of dismissal in Circuit Court is a hollow remedy, see Judge Seiler's dissent in *In re T.J.H.*, 497 S.W.2d 433 (Mo. banc 1972). The damage will be done; the dismissal will be in effect, and there is no going back to juvenile court unless Relator is ultimately found not guilty after further court proceedings, during which he must proceed as an adult. *Section 211.071, RSMo*. In the meantime, while awaiting any further proceedings, Relator will be held at an adult jail with adult prisoners. Even in the unlikely event that the state chooses not proceed with felony charges in this case, Relator will still be forever barred from juvenile court and their services, without remedy, as a result of being forced to participate in a certification hearing wherein he is not competent to proceed. For a discussion of this general problem, see *State v. K.J.*, 97 S.W.3d 543 (Mo. App. WD 2003).

Further, the courts have an obligation to ensure that Relator is not forced into court without the requisite mental capacity to comprehend the proceedings. "The principle which will not tolerate conviction of an accused who lacks capacity to consult with counsel and to understand the proceedings rests on values of public conscience - quite apart from considerations of guilt or innocence." *State v. Petty*, 856 S.W.2d 351, 353 (Mo. App. SD 1993) (quoting *State v. Clark*, 546 S.W.2d 455 (Mo. App. 1976)).

Should Relator be forced to proceed with the pending certification hearing while incompetent, it will be in violation under his constitutionally protected right to effective assistance of counsel and due process of law under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Sections 10 and 18(a) of the

Missouri Constitution and the laws of Missouri.

For these reasons, cumulatively and individually, Relator prays that this Court issue its preliminary writ of prohibition in this matter as requested above.

Respectfully submitted,

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Certificate of Service

I certify that a true copy of the above and foregoing was personally served on Nancy Sido, Assistant Prosecuting Attorney, St. Louis County Prosecuting Attorney, and the Honorable Maura McShane, Circuit Judge, St. Louis County Family Court, Division 2, , by delivering same to their place of business at the St. Louis County Juvenile Court, 501 South Brentwood, Clayton, MO 63105, all on this ____ day of _____, 20__.

Kristine Kerr

Westlaw.

136 S.W.3d 67

136 S.W.3d 67

(Cite as: 136 S.W.3d 67)

Page 1

C

State ex rel. D.C. v. McShane
Mo., 2004.

Supreme Court of Missouri, En Banc.

STATE ex rel. D.C., Relator,

v.

The Honorable Maura McSHANE, Judge,
Twenty-First Judicial Circuit, Respondent.

No. SC 85555.

June 8, 2004.

Background: Juvenile, who was charged in the juvenile division of the St. Louis County, Circuit Court, with the commission of several felony offenses, petitioned for a writ of prohibition to prevent the court from certifying him to stand trial as an adult.

Holdings: The Supreme Court, Stephen N. Limbaugh, Jr., J., held that:

- (1) prohibition was appropriate remedy, and
- (2) juvenile was entitled to writ of prohibition preventing juvenile division from finding him competent to proceed in juvenile certification proceedings.

Preliminary writ made absolute.

West Headnotes

[1] Prohibition 314 ⚔️ 11

314 Prohibition

314I Nature and Grounds

314k8 Grounds for Relief

314k11 k. Errors and Irregularities. Most Cited Cases

"Prohibition" will lie when there is an important question of law decided erroneously that would otherwise escape review by Supreme Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision.

[2] Prohibition 314 ⚔️ 3(4)

314 Prohibition

314I Nature and Grounds

314k3 Existence and Adequacy of Other Remedies

314k3(4) k. Remedy by Appeal in Criminal Cases. Most Cited Cases

Prohibition was appropriate remedy in matter to prevent trial court from certifying juvenile to stand trial as adult; certification hearing had not yet occurred, and determination of competency for purposes of certification hearing was not final order subject to review.

[3] Infants 211 ⚔️ 68.7(2)

211 Infants

211VI Crimes

211k68 Rights and Privileges as to Prosecutions

211k68.7 Waiver of Juvenile Court Jurisdiction; Transfer to Adult Court

211k68.7(2) k. Grounds, Objections, and Matters Considered; Discretion. Most Cited Cases

Juvenile was entitled to writ of prohibition preventing juvenile division from finding him competent to proceed in juvenile certification proceedings; testimony indicated that juvenile suffered from severe mental limitations and did not function much above early elementary school level, he understood workings of legal system and certification procedures only on vague and superficial level and would not be able to adequately consult with counsel, there was no evidence of malingering, and staff psychologist indicated that juvenile was one of her five most delayed individuals she had treated in 25 years of practice.

*68 Kristine A. Kerr, Office of State Public Defender, Clayton, for Relator.

Nancy L. Sido, Family Court of St. Louis County, Clayton, for Respondent.

136 S.W.3d 67
 136 S.W.3d 67
 (Cite as: 136 S.W.3d 67)

Page 2

STEPHEN N. LIMBAUGH, JR., Judge.
 D.C., who is charged in the juvenile division of the St. Louis County Circuit Court with the commission of several felony offenses, petitions this Court for a writ of prohibition to prevent the court from certifying him to stand trial as an adult. D.C. first sought relief in the Court of Appeals, which was denied. This Court has jurisdiction. Mo. Const. article V, section 4. The preliminary writ of prohibition is made absolute.

I.

In November 2002, D.C. escaped from the custody of the Division of Youth Services where he had been placed after adjudication for five separate law violations. Following his escape, on November 20, 2002, D.C. and accomplices allegedly committed robbery in the second degree and the class C felony of stealing of a car. Then on December 25, 2002, D.C., again with accomplices, allegedly committed first-degree robbery and first-degree assault. Since that time, D.C. has been confined in the St. Louis family court detention center. On December 26, 2002, the St. Louis County juvenile office filed a petition against D.C. pursuant to section 211.071, RSMo 2000-the statute that allows a juvenile court to dismiss a case so that it may be brought in a court of general jurisdiction-on the basis that D.C. had "committed two or more prior unrelated offenses which would be felonies if committed by an adult..." In other words, the juvenile office moved that D.C. be certified for transfer to an adult court.

After the juvenile division set the date for the certification hearing, D.C.'s counsel, knowing that D.C. had a history of moderate mental retardation, hired a psychologist, Dr. Jefferies Caul, to evaluate D.C.'s competency to proceed. Thereafter, the juvenile officer requested that Dr. Margo Layton, a staff psychologist for the St. Louis family court, also evaluate D.C. on the competency issue. Dr. Layton had previously performed a psychological evaluation on D.C., though it was unrelated to his competency to stand trial. She and Dr. Caul also re-

lied on evaluations conducted in 2001 and 2002 by another psychologist, Dr. Russo.

On July 17, 2003, following the doctors' evaluations, the juvenile division held a competency hearing. D.C. called both Dr. Caul and Dr. Layton as witnesses, and their testimony was to the same effect. Both doctors testified that D.C. was moderately retarded and that he had a full scale IQ of 46. They explained that the least serious category of mental retardation is mild mental retardation and that 80-85% of the mentally retarded population falls into this category. On the other hand, moderate mental retardation, from which D.C. suffers, is the next level of retardation, and individuals with this condition constitute only 10% of the retarded population. They added that moderately *69 retarded individuals acquire their communication skills during an early age and are unlikely to progress beyond the second grade level. In their adult years, these individuals function best in highly structured group homes and usually work in a sheltered-workshop setting.

Dr. Caul conducted a variety of tests to gauge D.C.'s mental abilities. He found that D.C.'s language was "simple, immature and concrete for his age." In conversation, D.C. had "word finding difficulties" and "errors of verb tense." His skills were "uniformly depressed." D.C. also had trouble understanding basic concepts from everyday experience. He identified the shape of a ball as a square, stated that Monday followed directly after Saturday, and said that there were twelve weeks in a year. When shown a picture of a spoon, "D.C. insisted on calling it a fork." On the Peabody Picture Vocabulary Test, which asks the subject to perform tasks such as picking out a picture of a cow from three other pictures, D.C. performed at the age equivalent of below one year and nine months. In a similar type of test, the Expressive Vocabulary Test, D.C. misidentified an elephant as a "lion" and a rabbit as a "cat." D.C.'s age equivalent on this test was "two years and six months." Dr. Caul also found D.C.'s short-term memory skills were ex-

136 S.W.3d 67
136 S.W.3d 67
(Cite as: 136 S.W.3d 67)

Page 3

tremely limited. For example, he could not repeat a three-digit number, such as "five, eight, two." He also failed to repeat "six, eight, nine." Dr. Caul determined that D.C.'s short-term memory was at a "three-year-old level." In addition, Dr. Caul tested D.C.'s "visual-perceptual-motor processing skills" by asking D.C. to replicate a drawing directly below the original. On that test, D.C. was "able to do some items up to about a five-year-old level, but at a five year level, he started refusing to do them because it was too challenging for him." The results of Dr. Caul's testing of D.C.'s academic skills were much the same. D.C. was only able to read a few isolated words, such as "in, can, as, was, have, when, and about." Dr. Caul found that D.C. did not consistently know his letters and that he was unable to identify the "letter b or the letter c," and he explained that "these skills should be emerging in the preschool level." Further, although D.C. did his best to comply with testing directions, he could only understand some of them. For example, D.C. could not read the phrase "one book" and point to the picture of the book.

Dr. Caul then testified about D.C.'s understanding of the certification hearing and its participants. D.C. explained that a lawyer's job was to "Help you. Try to get you out of here." The judge's role was to "send you away." The deputy juvenile officer's purpose was to "try to help change your life." However, when Dr. Caul asked D.C. about the difference between right and wrong, D.C. said he "didn't know." Furthermore, Dr. Caul found that D.C.'s ability to communicate his own thoughts was at a two-year six-month level, and his short-term memory skills were so limited that "he is not able to follow any complex interactions at all, especially in a legal setting." Ultimately, Dr. Caul concluded that D.C. was not competent to participate in the certification hearing.

Dr. Layton's tests yielded similar results. For example, she found that D.C.'s ability to acquire and retain verbal information in an academic setting was lower than "99% of his age level peers." Dr.

Layton found that D.C.'s arithmetic and vocabulary skills were "very significantly below average." On a test to determine D.C.'s ability to process information acquired from everyday experience, D.C. scored a "one" the "lowest scalable score." On the "block design" test, D.C. received a scale of four, which is equivalent to a *70 chronological age of ten and one-half years, but this was the best D.C. performed on in any of the tests. In sum, Dr. Layton stated that D.C. is one of the "five or less" most delayed individuals she has tested in her twenty-five years of practice working for the St. Louis County court system, a practice in which she presumably treated many scores of troubled youths.

Dr. Layton also testified about D.C.'s understanding of the certification process. She noted that D.C. was able to express that the purpose of the hearing was to determine in which court the case was to be heard. D.C. also understood that "he would have a record for life if he were sent to the adult court and that he could start over if he were retained in the juvenile system." In addition, D.C. told Dr. Layton that he did not want to be certified; instead, he wanted to stay in the juvenile system and "get his life back together." In view of these responses, Dr. Layton surmised that while D.C. understands what a certification hearing is to the extent that he understands that he may or may not be retained in the juvenile system, he may be unable to weigh and evaluate the long-term impact of the decisions that could be made at the certification hearing.

Unlike Dr. Caul, Dr. Layton did not reach a conclusion about D.C.'s competency to proceed in a certification hearing, because she believed that it was a decision for the court. However, she maintained that it would be difficult for D.C. to completely follow the certification hearing and that he had a compromised ability to work collaboratively with his attorney and make informed decisions about the case. If the vocabulary used in the courtroom was above a "second or third grade level," then D.C. might not understand it. All in all, Dr. Layton had significant questions about D.C.'s capacity to fully

136 S.W.3d 67
 136 S.W.3d 67
 (Cite as: 136 S.W.3d 67)

Page 4

participate in the juvenile proceedings. Finally, she explained that she had been trained to detect malingering, and she did not believe D.C. was malingering.

The juvenile office's sole witness was deputy juvenile officer Helena O'Reilly. She testified that D.C. had written ten love letters to girls while in the custody of the juvenile division, that she had seen the letters through interoffice mail, and that D.C. told her that he had written them. Though Ms. O'Reilly did not actually see D.C. write any of the love letters, she testified that all of these letters were written in the same handwriting, but she did note that some of the handwriting was in print and some was "more cursive." Ms. O'Reilly also acknowledged that another explanation for the letters "is that he had a friend help him...."

Ms. O'Reilly then testified about a grievance form that D.C. had purportedly filled out, which was in the same handwriting as the love letters. This form was admitted into evidence and contained D.C.'s name, unit, unit leader's name, date, his juvenile officer's name, and the shift in which the incident occurred. The author wrote in the blank designated for a description of the incident, "I ask for another bottle of deodorant. Because the other kind he gave us burns everybody under the arms. So he drop my level." The form also posed the question, "Why do you feel you are being treated unfairly?" to which the author responded, "That was stupid to drop my level because I ask for deodorant." Ms. O'Reilly testified that the handwriting on the form was identical to the love letters, but, as it was with the love letters, she did not actually see D.C. fill out the form.

When confronted with this evidence, Dr. Caul agreed that the handwriting could be D.C.'s, but both he and Dr. Layton opined that the information contained on the form *71 was totally inconsistent with their evaluations of D.C. In addition, Dr. Layton testified that there were only three possibilities regarding the authorship of the grievance form: 1) D.C. had written it and had been malinger-

ing for three separate psychological professionals since at least 2001; 2) that someone else had written it for D.C.; and 3) D.C. had been coached. Dr. Layton then reiterated that she thought that her test results were "accurately reflecting his intellectual ability ..." and that D.C. was not malingering.

On July 21, 2003, the juvenile division issued an order that D.C. was competent to proceed with a certification hearing. In support of the order, the court noted: "During the hearing the Court heard the evidence and had the opportunity to observe the juvenile. At one point during the hearing juvenile's attorney showed him a document and had a conversation with the juvenile regarding the document." The court ultimately found that "although the juvenile may be in the moderately retarded range; he is competent to understand the certification hearing and to consult with his attorney." As a result, the court set the matter for a certification hearing that is now the subject of the writ.

II.

[1][2] As an initial matter, respondent argues that D.C.'s petition for writ of prohibition should be dismissed pursuant to Rule 84.22(a), because adequate relief can be afforded by an appeal. "Prohibition will lie when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision." *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. banc 1994). Here, respondent's argument is based on *In re T.J.H.*, 479 S.W.2d 433 (Mo. banc 1972), in which this Court held that an interlocutory appeal was not available to review an order transferring a juvenile to the adult court system. *Id.* at 434-35. The remedy, this Court held, was that the juvenile could file a motion to dismiss in the circuit court. *Id.* at 435. In this case, however, the petition is to preclude the judge from conducting the certification hearing in the first place. Because the certification hearing has not occurred, *T.J.H.* is inap-

plicable, and because the determination of competency for the purposes of a certification hearing is not a final order subject to review, prohibition is an appropriate remedy.

III.

[3] On the merits, D.C. argues that he is entitled to a writ of prohibition preventing the juvenile division from finding him competent to proceed, because he cannot understand or appreciate the nature of the proceedings or assist his counsel. The Supreme Court has not expounded on a competency requirement for juvenile certification proceedings, and to date has held only that the proceedings are "critically important" and "must satisfy the basic requirements of due process and fairness...." *Kent v. United States*, 383 U.S. 541, 553, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). These requirements include, at the least, a hearing, assistance of counsel, and a statement of reasons for the court's decision. *Id.* at 561. In any event, the juvenile office here submits that the competency standard is the same as that in the adult context, that is, the accused must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him," citing *Godinez v. Moran*, 509 U.S. 389, 390, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993) (plead guilty *72 or waive counsel); *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960) (criminal trial).

Applying this standard to the facts of the case leads to the conclusion that D.C. is not competent and that the trial court's determination to the contrary is not supported by the record. There is no need to recount all of the factual details. Suffice it to say that according to the uncontroverted testimony of both experts, D.C. is suffering from severe mental limitations, and he is not functioning much above an early elementary school level. Further, he understands the workings of the legal system and the certification procedures only on a vague and superficial level and would not be able to adequately con-

sult with counsel. And, significantly, neither of the experts detected any evidence of malingering that would have allowed the trial court to discount their findings. Although Ms. O'Reilly's account of the love letters and grievance form plays against a finding of incompetency, the fact remains that she did not see D.C. write any of the documents, and she conceded that D.C. may have been assisted. Ultimately, however, this Court is most persuaded by the testimony of the juvenile court's own expert, Dr. Layton, who not only refuted Ms. O'Reilly's testimony about the letters, but joined in Dr. Caul's bleak and seemingly hopeless evaluations in all material respects. Though developmental delay does not necessarily equate to incompetence, it is compelling evidence indeed that D.C. is one of the "five most delayed individuals" that Dr. Layton has treated in her twenty-five years of practice. In short, the evidence of incompetence was overwhelming.

IV.

In conclusion, this Court holds that D.C. is incompetent to proceed with the certification hearing. The preliminary writ is made absolute.

All concur.
Mo.,2004.
State ex rel. D.C. v. McShane
136 S.W.3d 67

END OF DOCUMENT

APPENDIX C: MANAGEMENT EXPERIENCE

1993-2003

At the time, the St. Louis City Public Defender's Office consisted of some twenty-five attorneys, five investigators, six support staff personnel, a First Assistant and a District Defender. This office services the legal needs of those indigent persons charged with misdemeanors, felonies and probation violations in the City of St. Louis. This office handles all felonies, misdemeanors and probation violations for indigent clients except for Murder First Degree cases in which the state seeks the death penalty. In addition, the Public Defender's Office represents indigent persons seeking conditional or unconditional releases, after they are in the custody of the Missouri Department of Mental Health. The St. Louis City Trial Office does not usually represent clients on appeal, or clients seeking post-conviction relief. Typically, this office has led others in the state with number of jury trials; each year, the attorneys usually try many cases to a jury.

By way of example, here is the trial data for the St. Louis City Trial office from 1998 up to 2002:

Type	Total	1998	1999	2000	2001	2002
Felony	621	110	104	99	100	121
Misdemeanor	72	7	17	11	17	10

Assigning Felony Caseloads using Databases:

From 1994 to September, 2003, as First Assistant, I assigned all felony cases in the office, with periodic times during which the current District Defender would perform this task. During this time, the Public Defender's Office would represent between 50 and 70% of the criminal dockets in the City of St. Louis.

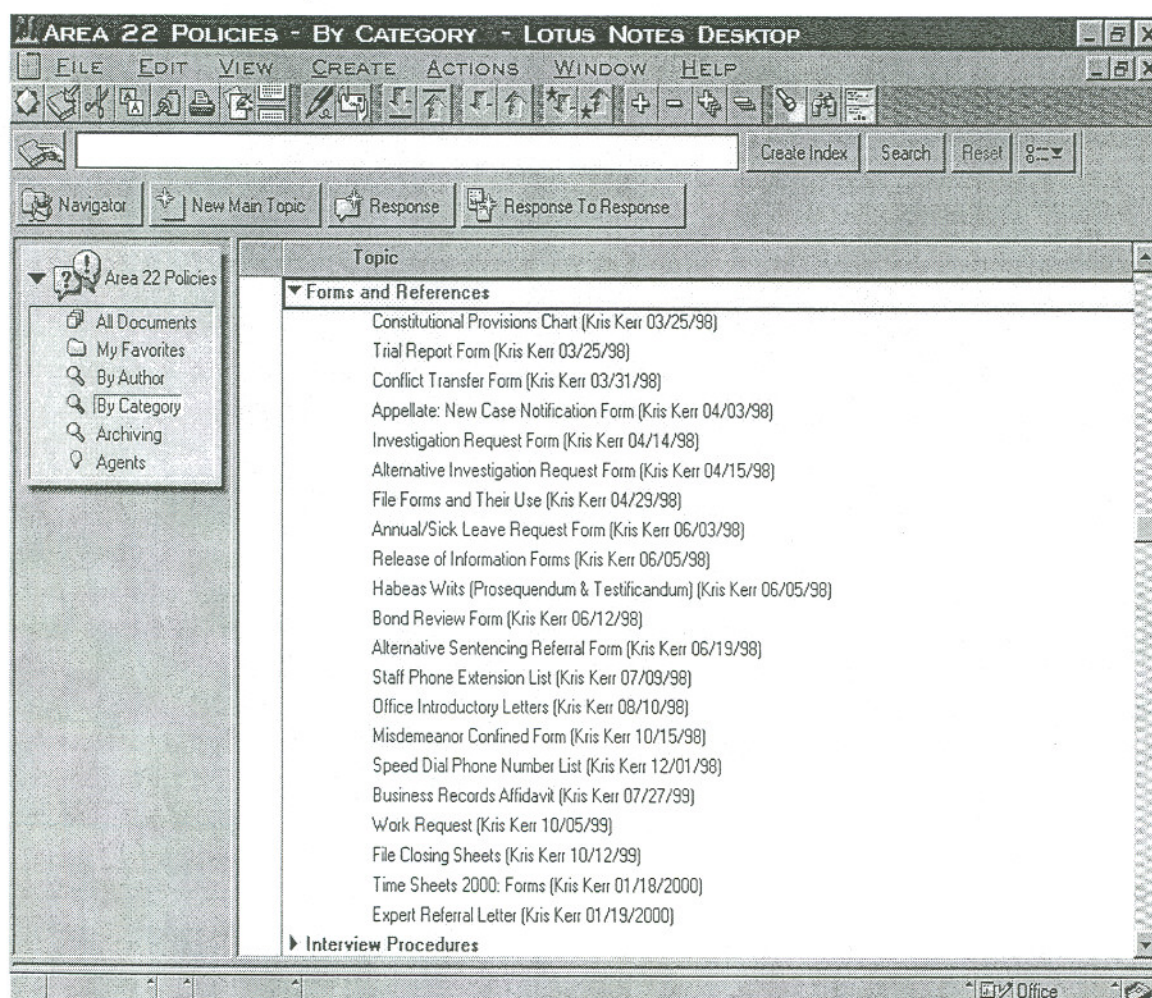
Each year, I would assign thousands of felony files to the various attorneys in the office, working at this task in conjunction with the current District Defender. For example, up to September of 2003, I assigned 2,190 felony files. In 2002, we assigned 2,676 felony files to the trial staff. In 2001, we assigned 2,876 felony files. During 2000, we assigned 2,271 felony files. During 1999, we assigned 2,481 felony cases. In 1998, I assigned over 3,000 felony cases. This statistic is comparable to previous years, since 1994 (when individualized caseload assignment began).

In order to do this assignment fairly, based on experience levels and caseloads between multiple teams of attorneys, I originally designed and built a Lotus Approach database which can analyze the caseloads of attorneys by case type, total numbers, summarizes by month and totals to date. The case assignment database can also break case assignments down across the office by felony charge, class, or type (such as drugs, sex charges, etc). Since 2000, the Public Defender System has used Microsoft Access, which is a comparable database program. Once one enters the data, which is done to assign the new case, we could sort it in any way that is necessary or informative in order to keep caseloads proportionate between attorneys of differing experience levels. I could also create reports or cross-tabulations to summarize caseload across a number of variables.

The Public Defender System uses a Lotus Notes caseload and e-mail program, which is the same application used by the Office of the State Courts Administrator and the St. Louis City and County Courts.

Created Office-wide Policies and Procedures Database

To streamline information and references between attorneys, support staff and managers, I created and maintained an office-wide Lotus Notes database containing policies, procedures, forms, references and lists. For example, we had lists of the misdemeanor staff courtroom schedules on this database, so staff would know who was scheduled to appear in misdemeanor court on any given day for the year. We scheduled intake duties across attorney staff for the entire year, coordinated with the Circuit Attorney's Office, and this was available on the database to all staff. The attorney-investigator pairings are posted. The attorneys could consult the "forms" section of this database, the contents of which appear below:



Improving Probation Violation Case Handling:

Prior to 1996, probation violation cases were assigned to particular attorneys early on the same week of their court date. I implemented a schedule, which assigned a particular attorney to a particular courtroom for six-month intervals. For busier probation dockets, we assigned two

attorneys. This system helped facilitate more consistent and knowledgeable representation; the attorneys could anticipate dockets and better prepare for court dates, the Judges could have a contact person to call on for assistance, and the clients can predict who their attorney will be. The quality of representation was much higher and judicial efficiency was improved.

Creating Form Office Introductory Letters for Confined Clients:

In St. Louis City, every morning, attorneys from the Public Defender's Office interviewed prospective clients who were recently arrested, or who were in custody and needing representation. Those interviews occurred in the spaces behind Division 25, the primary associate courtroom for new felony cases. Staff found themselves explaining basic answers to the same questions over and over again; clients wanted to understand what a grand jury was, what a preliminary hearing was, and what different kinds of bonds might be available. In 1998, I wrote a series of form introductory letters, which staff would hand out to clients during this interview process. These letters were directed to clients facing grand jury indictment, clients facing a preliminary hearing and those clients incarcerated for probation violation cases. All letters explained the basic bonds arrangements and listed phone numbers for further information on how to qualify for or post these bonds.

Restructuring Case and Attorney Trial Scheduling:

Finally, I analyzed and assisted in restructuring the felony case trial scheduling system in St. Louis City. Prior to 1994, all Assistant Circuit Attorneys and Assistant Public Defenders were scheduled to be available on trial dockets every three weeks. On the fourth week, that attorney appeared in the warrant office (if a prosecutor) or on intake (if a public defender). The schedule was grueling for all parties, and did not allow any time to prepare cases if the attorney was in trial on multiple consecutive weeks. Such a schedule contributed to increased attorney attrition in both offices.

This situation was created by the fact that St. Louis City dockets were run centrally, with cases assigned out for trial to courtrooms during the weeks that they are on the docket. While not currently the situation, at that time, the central docket was prepared six weeks ahead by the court. The attorneys were required to prepare each case for trial, which was listed on "stand-by" (the cases not continued at docket call for other reasons). It was not unusual for an attorney (prosecution or public defender) to have to be ready for trial on upwards of 12 or 15 cases in any given week. Further, as the cases could be called out to trial one at a time based on party availability, the attorney may not know which case will come next. Attorneys needed to be available to try cases three weeks out of four; on the fourth week, that attorney performed intake duties ("warrant office" for the prosecutor, "office assignment" for the public defender).

In 1994, I compiled docket and trial data and presented my analysis and recommendations to the Public Defender Commission. My solution required that all attorneys from both sides be coordinated in teams (A or B) and paired up together by date, in order that the attorneys and the courts could plan on one week per month during which that team of attorneys did not have to answer the trial docket. During this week, they could prepare cases, conduct depositions, and visit clients. After receiving approval from the Public Defender Commission, we presented our plan to the Circuit Attorney's Office, who supported our conclusions. Together, the Public Defender and Circuit Attorney obtained the cooperation of the Twenty-Second Judicial Circuit in

implementing this schedule, which operated from 1994 until at least the time I left that office in 2003.

APPENDIX D: TRAINING

The Missouri Public Defender System operates an extensive training program, which provides opportunities for attorneys to receive training within Missouri and at seminars across the nation.

A centerpiece of the system-wide training is the annual Winter Workshop, conducted over a full week and modeled after prominent national programs such as the National Criminal Defense College. This workshop is required for all new attorneys in the Public Defender System, and also provides supplemental training for attorneys who have progressed in their practice. The program is delineated as "Track I" for our newest attorneys and "Track II" for those attorneys needing supplemental training. In recent years, attorneys from other states have attended the Winter Workshop. There are also tracks for appellate counsel and investigators.

The Winter Workshop (targeting trial attorneys) is based on lectures, demonstrations and lots of small group exercises focusing on each basic facet of trial practice. Every small group meeting is "coached" by two senior attorneys from the Public Defender System. The participants are given their "cases" to work on ahead of time and must prepare their theory of the case, opening statements, cross-examinations, direct examinations, and closing arguments. A day is devoted to each segment, interspersed with lectures and demonstrations on other relevant topics. The participants evaluate the quality of their coaching, as well as each lecture, at the end of the workshop.

I have been invited to participate in training other attorneys in the Public Defender System as follows:

November, 1992	Small Group Coach for the full week of Winter Workshop, Track I
November, 1993	Small Group Coach for the full week of Winter Workshop, Track I
December, 1995	Small Group Coach for the full week of Winter Workshop, Track I
December, 1997	Presenter: Voir Dire "Getting Jurors to Talk" and "Strikes and Rehabs"
December, 1998	Presenter: Voir Dire "Strikes and Rehabilitations"
October, 2001	Small Group Coach for two days of "New Attorney Workshop" (targeted to very new hires who have need training but have not been to Winter Workshop yet)

In addition to the above, I participated as a panelist on the issue of racial profiling, for the Municipal Judge's Conference, held at Tan-Tar-A, on May 22, 2003.

Finally, I have conducted in-house small training sessions on aspects of trial practice such as voir dire, cross examination and case preparation. As part of my duties as First Assistant, I would often second-seat less experienced attorneys in their initial trials. This would include working with that attorney in advance of trial, to hone the voir dire, pre-trial motions, cross examination and closing arguments for that case. While I did not usually keep statistics on such activities, I

do have a list of the cases for 2001, which was a fairly representative year for such duties. During 2001, I second-sat attorneys in our office as follows:

<i>Date</i>	<i>Defendant Name</i>	<i>Cause No.</i>	<i>Charge</i>	<i>Judge</i>	<i>Result</i>
2/20/01	Jerome Watson	999-6145	Assault III	Sweeney	Guilty
2/26/01	Barbara Pippens	011-0398	Child Abuse	Wilson	Guilty
3/12/01	E.O.	*****	Assault III	Sweeney	NG
6/05/01	Byron Carter	011-3661	UUW*	Heagney	Hung
7/16/01	M. M.	*****	Assault III	Sweeney	NG
8/06/01	Alaric Pitts	011-0625	UUW	Cohen	Hung

(* Unlawful Use of a Weapon/Carrying a Concealed Weapon)

Regarding my on-going training, in addition to attending the annual Judicial College training events provided to the judiciary, I have recently applied for and been accepted to the Advanced Science and Technology Adjudication Resource Project (ASTAR) training program. Over thirty members of the Missouri judiciary applied; eighteen were selected.

ASTAR is a program which is funded by the Department of Justice. It currently has thirty nine enrolled jurisdictions at both the state and federal court systems. The project provides intensive education in the field of science and technology where these fields intersect with the courts. The training programs encompass a broad backdrop in forensics, biological evidence and the life sciences. The educational programs focus on current developments in neurosciences and related technologies, complex health care cases, genetic predispositions, susceptibilities and related risks, and the biology of addictive disorders. Throughout, the course follows a theme of the judge's determination of the underlying scientific methodology and technical authenticity as it relates to the complex litigation which may appear before that court. The goal of this program is to prepare a judge to more comfortably and efficiently confront the complex and new scientific or technological issues which arise in today's litigation. Judges who complete the program are then eligible to be certified as an ASTAR Fellow. The project requires that an ASTAR Fellow should be available to their respective state jurisdictions as a source of information and advice in cases involving complex and novel science and technology evidence.

We began our training at a trial skills seminar focusing on from April 16 to April 18, 2008. Following the completion of this first "boot camp" course, each participant in the ASTAR program must select and attend two out-of-state programs, scheduled and conducted by the ASTAR. Those seminars are schedule to occur this summer and fall.

Attached is the agenda from our recent April seminar, "CSI Missouri," to provide a context and background for the topics taught in this introductory phase of the ASTAR program.

2008 TRIAL SKILLS SEMINAR CSI MISSOURI

April 16-18, 2008
Courtyard by Marriott, Columbia, Missouri

The course objectives are to provide Missouri trial judges with information on current case law and standards for crime scene evidence, trends in forensic evidence, to enhance the trial judge's appreciation for evidence collection and analysis, and to provide a primer for the science involved. The goal of this program is to educate trial judges about what is truly the science in each field, where science ends and the interpretation of the scientific findings begin, and what are the limits of the science in each field.

This year we are presenting the seminar in conjunction with the Advanced Science and Technology Adjudication Resource Center - ASTAR which operates under a grant from the U.S. Justice Department to identify, recruit, train, and deploy science and technology resource judges.

Wednesday, April 16, 2008 ASTAR PRESENTATION

1:00-1:30 REGISTRATION

1:30-1:40 INTRODUCTION OF ASTAR PROGRAM

Presenters: Judge Ronald Holliger, Missouri Court of Appeals, Western District
Judge Glenn Harrell, Maryland Court of Appeals and Director, ASTAR
Franklin M. Zweig, Ph.D, JD, President, ASTAR

1:40-3:10 WHAT IS SCIENCE? (1.8 CLE)
Scientific method
Pseudo and Junk Science
Basic DNA and Biological Evidence

Presenter: Dr. James Evans, MD, PhD, Professor
University of North Carolina School of Medicine

3:20-4:20 DNA LAB (1.0 CLE)
What is Testable
What Reports a lab can produce
What to expect from lab experts
Pitfalls and what to look out for in lab expert testimony

Presenter: Tina Delgado, DNAUI Examiner
DNA Section, Quantico, VA

4:30-5:30

CONTESTED PCR (1.0 CLE)
DNA Evidence in Claims of Wrongful Conviction

Presenters: Tiffany Murphy, Legal Director, Midwestern Innocence Project
Professor Sean O'Brien, University of Missouri-Kansas City School of Law

Wednesday Afternoon CLE Hours: 3.8 hrs.

Thursday, April 17, 2008
CSI MISSOURI

8:30-8:40

INTRODUCTORY REMARKS

Presenters: Judge Ronald Holliger, Missouri Court of Appeals, Western District
Judge Jeffrey Bushur, 16th Judicial Circuit, Jackson County

8:40-9:30

DRUG DOG DEMONSTRATION (1.0 CLE)

Methods and Training
Alerting
Demonstration
Q&A

Presenters: Corporal Matt Broniec and Kai
Corporal Brooks McGinnis and Puki
Corporal Brian Hagerty
Missouri State Highway Patrol

9:30-10:20

CRIME SCENE 101 (1.0 CLE)

Collection and Preservation of Crime Scene Evidence
Collection methods and standards for Crime Scene Investigators
Methods and standards for Crime Labs
Qualifications and Training
Backlogs at Labs

Presenters: Linda Netzel, Director, Kansas City Regional Crime Lab
Frank Booth, Kansas City Regional Crime Lab
Bill Marbaker, Assistant Director, MSHP Crime Lab

10:20-11:30

TRACE EVIDENCE (1.0 CLE)

Hair and Fiber
Glass and Paint
Soils and Plants
Gunshot/Explosive Residue
Volatile hydrocarbons – Arson evidence

Presenters: Michael Baker, Criminalist III, MSHP Crime Lab
Frank Booth, Kansas City Regional Crime Lab
Will Randle, Criminalist Supervisor, MSHP Crime Lab

FINGERPRINT EVIDENCE

Presenter: Kathy Hentges, Kansas City Regional Crime Lab

11:30-12:00 RESPONSE PANEL TO MORNING PRESENTATIONS (.50 CLE)

Panel: Rusty Antel, J.D., Walther, Antel, Stamper, & Fischer, PC
Page Bellamy, Prosecuting Attorney, Lafayette County
Judge Jeffrey Bushur, 16th Judicial Circuit, Jackson County
Judge Larry Harman, 7th Judicial Circuit, Clay County

Thursday Morning CLE Hours: 3.5 Hrs.

12:00-12:45 LUNCH

12:45-1:40 FIREARM IDENTIFICATION (1.0 CLE)

Firearms identification
Impression comparisons

Presenter: Todd Garrison, Criminalist Supervisor, MSHP

1:40-3:00 SEROLOGICAL EVIDENCE (1.6 CLE)

Blood Pattern Analysis – blood spatter and transfer
Scientific reliability of experiments
Presumptive tests – luminal
Interpretation of the evidence

Presenters: Linda Netzel, Kansas City Regional Crime Lab
Frank Booth, Kansas City Regional Crime Lab

3:00-3:30 RESPONSE PANEL TO AFTERNOON FORENSICS (.50 CLE)

Panel: Rusty Antel, J.D., Walther, Antel, Stamper, & Fischer, PC
Judge Jeffrey Bushur, 16th Judicial Circuit, Jackson County
Ted Hunt, Assistant Prosecuting Attorney, Jackson County

3:30-5:00 FORENSIC PATHOLOGY (1.8 CLE)

Death scene investigation
Autopsy
Child Homicide by neglect and inflicted injury
Q&A

Presenters: Douglas Anthony, M.D., Ph.D.,
Professor and Chair, Dept. Of Pathology and Anatomical Sciences
University of Missouri, Columbia
Carl Stacy, M.D., ME Boone and Callaway Counties

Thursday Afternoon CLE Hours: 4.9 Hrs.

Friday, April 18, 2008
CSI MISSOURI

8:20-8:30 INTRODUCTORY REMARKS

Presenters: Judge Ronald Holliger, Missouri Court of Appeals, Western District
Judge Jeffrey Bushur, 16th Judicial Circuit, Jackson County

8:30-10:20 COMPUTER FORENSICS (2.2 CLE)

Methodologies for forensic computer examination
Forensic tool sets
Scope of Examinations
Privacy Interests

Presenters: Chris Pickering, Chief Investigator
Justin Glick, Investigator
High Technology and Computer Crime Unit
Office of the Missouri Attorney General

10:20-10:40 RESPONSE PANEL TO COMPUTER FORENSICS (.40 CLE)

Panel: Judge Deborah Daniels, 13th Judicial Circuit, Boone County
Michael Hunt, Prosecuting Attorney, Jackson County
J. Justin Johnston, J.D., Wyrsh Hobbs & Mirakian, P.C.

10:40-11:20 CODIS DATABASE ADMINISTRATION (.80 CLE)

Presenter: Susanne Brenneke, Criminalist III/Missouri State CODIS Administrator
MSHP Crime Lab

11:20-12:00 THE COURTS AND FORENSIC EVIDENCE (.80 CLE)

Gatekeeping Function

Panel: Trial Judge Education Committee Members

12:00 ADJOURN - Lunch on Your Own

Friday Morning CLE Hours: 4.2 Hours

Total Program CLE Hours: 16.4 Hrs.

Biographical Information

Commissioner Kerr was appointed Family Court Commissioner by the St. Louis County Court *en banc* in September, 2004. She was reappointed in April, 2008.

She received her Bachelor of Arts Degree in Economics from Brown University and received her Juris Doctorate from Boston University.

Commissioner Kerr clerked for the Honorable Kent Karohl, Missouri Court of Appeals, Eastern District, from 1986 to 1987. She engaged in private practice from 1987 through 1988 and joined the Missouri State Public Defender System in 1988. She worked as an Assistant Public Defender in St. Louis City and defended death penalty cases with the Capital Litigation Division. She became First Assistant Public Defender in St. Louis City in 1993 and Assistant Public Defender in St. Louis County in 2003. From this position, she was appointed Family Court Commissioner.

Commissioner Kerr is a member of the St. Louis County Bar Association, the Women Lawyer's Association, the Lawyer's Association, the Bar Association of Metropolitan St. Louis, the National Association of Women Judges and the St. Louis Knitter's Guild.

She and her husband live in St. Louis County with their two children.